

EXHIBIT 2

NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.
William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTHERN NEW YORK

3 NAVIDEA BIOPHARMACEUTICALS, INC. CIVIL ACTION NO.

4 1:19-cv-01578-VEC

5 VS.

6 MICHAEL M. GOLDBERG, M.D. DECEMBER 6, 2021
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11 DEPOSITION OF WILLIAM F. MURRAY, CPA/ABV/CFF, ASA
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17 Reported by: Wendy J. Leard
18 Registered Merit Reporter
19 CSR # 39
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William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

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1 I N D E X

2 -----

3 WITNESS WILLIAM F. MURRAY, CPA/ABV/CFF, ASA

4 -----

5 DIRECT EXAMINATION BY MR. ZIMMER 5

6 -----

7 EXHIBIT DESCRIPTION PAGE

8 -----

9 Defendant's Exhibit A, Expert Rebuttal Report
 10 of William F. Murray, ASA, CPA/AB, CFF 5

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12 (The original exhibit was filed
 with the original transcript.)

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1 . . . Deposition of WILLIAM F. MURRAY,
2 CPA, ABV/CFF, ASA, taken on behalf of the
3 defendant in the hereinbefore entitled action,
4 pursuant to the Federal Rules of Civil Procedure,
5 before Wendy J. Leard, RMR, duly qualified Notary
6 Public in and for the State of Connecticut, held
7 at the offices of Halloran & Sage, 225 Asylum
8 Street, Hartford, Connecticut, commencing at
9 9:44 a.m., on Monday, December 6, 2021.

10

11 S T I P U L A T I O N S

12

13 It is hereby stipulated and agreed, by and
14 among counsel for the respective parties, that all
15 formalities in connection with the taking of this
16 deposition, including time, place, sufficiency of
17 notice and the authority of the officer before
18 whom it is being taken, may be and are hereby
19 waived.

20

21 It is further stipulated and agreed that
22 objections, other than as to form, are reserved to
23 the time of trial and that the reading and signing
24 of the deposition are hereby not waived.

25

1 It is further stipulated and agreed
2 that the proof of the qualifications of the notary
3 public before whom the deposition is being taken
4 is hereby waived.

5

6 (Defendant's Exhibit A was marked for
7 identification and is described in the index.)

8

9 WILLIAM F. MURRAY, CPA/ABV/CFF, ASA,
10 Deponent, having first been duly sworn, deposes
11 and states as follows:

12

13 DIRECT EXAMINATION

14 BY MR. ZIMMER:

15 Q Good morning, Mr. Murray.

16 My name is Greg Zimmer. I represent
17 Dr. Michael Goldberg in this action. I'll be
18 taking your deposition today.

19 I assume you've been deposed before?

20 A A few times, yes.

21 Q I actually see you've been deposed before.

22 So just a couple of ground rules.

23 Is there any reason you wouldn't be able
24 to understand the questions I ask today or give
25 answers accordingly?

1 A No.

2 Q Okay. If, at any time, you don't
3 understand one of the questions, please ask me to
4 clarify. I'll be happy to do it. If not, it will
5 be assumed that you understood the question and
6 answered it accordingly.

7 If you can't hear a question, if you
8 mishear it -- if you think you misheard it, ask;
9 I'll be happy to repeat it. Otherwise, it will be
10 assumed that you heard the question and answered
11 it accordingly.

12 That should do it. We can deal with any
13 other rules as we go, but I'm sure you're pretty
14 much familiar with them.

15 If you need to take a break at any time,
16 that's fine. I would just ask that you not take a
17 break while there is a question pending.

18 A I understand. Thank you.

19 Q Okay. I'm going to just ask you to hold
20 on to what's been premarked as Exhibit A.

21 MR. ZIMMER: And here is a copy --

22 MR. KAZAN: Thanks.

23 MR. ZIMMER: -- for counsel.

24 BY MR. ZIMMER:

25 Q It's turns out -- it looks like it's

1 missing the last two pages. I don't intend to ask
2 anything about those pages. I just want to make
3 sure the record is complete.

4 It's the last pages of the addenda. So
5 the report is complete, and I'm going to ask you
6 about the report and possibly some of your prior
7 court appearances.

8 A Okay.

9 Q That portion of the exhibit is complete.

10 MR. KAZAN: Off the record for a
11 second.

12 (A conversation was held off the record.)

13 MR. ZIMMER: Back on the record.

14 BY MR. ZIMMER:

15 Q Could you just give me a brief summary of
16 your educational background?

17 A I have a bachelor of arts in accounting.
18 I took one graduate course in business law.

19 Q Okay. You made the right choice.

20 A What do you mean?

21 Q Going with the accounting.

22 A I don't know about that. I don't do
23 accounting anymore but . . .

24 Q Okay. How about your work history?

25 A I started --

1 Q Postgraduate, obviously.

2 A Postgraduate, I started at a Big -- what
3 was then a Big 8 accounting firm. From there I
4 went to an insurance company, another insurance
5 company, went to a manufacturer of auto parts, and
6 then from there I went to -- can I refresh my
7 memory?

8 Q Sure, of course.

9 A It's been a while.

10 I went to -- oh, Gerber Scientific, which
11 is here in the Hartford area. After that, I went
12 to a company called Centerprise Advisors, which
13 became UHY Advisors, which was subsequently merged
14 to Markham. And then, out of there, I went to
15 Willamette Management Associates and then went to
16 New York City to work for Anchin, Block & Anchin.

17 I left Anchin and went to BlumShapiro,
18 which is now CLA, I think. I think they merged
19 with CliftonLarsonAllen last year. And from
20 there, I went to Management Planning, Inc., where
21 I currently am.

22 Q What kind of work were you doing at
23 Coopers & Lybrand?

24 A At Coopers & Lybrand, I was a staff
25 accountant in audit.

1 Q In audit?

2 And Travelers, it says, "Senior Auditor."

3 Did you only do audit work there?

4 A At Travelers, I was part of the internal
5 audit team, and we mostly assisted with the
6 external audit.

7 Q Okay. At Aetna?

8 A Aetna, I was internal audit also. I did
9 more operational audits.

10 Q Okay. And Echlin?

11 A Echlin was an automotive -- they actually
12 started -- I think they got bought out by Dana
13 automotive years ago. They make after-market auto
14 parts, and I did IT audit for them.

15 Q How does that differ from, you know,
16 financial auditing?

17 A It's more looking at internal controls and
18 systems. When I was at Aetna, part of the -- for
19 the last year I was there, I was on the special
20 projects team where we went out and looked at
21 building internal controls in the new systems,
22 because insurance companies tend to like to build
23 their own systems.

24 Q Right.

25 A So at that time they wanted to build

1 internal controls into the systems when they
2 developed it.

3 Q And those were internal financial
4 controls?

5 A Mainly, yes.

6 Q Okay. And was that the type of work you
7 were doing at Echlin?

8 A At Echlin, I was looking at the internal
9 controls. I was also looking at the IT system to
10 make sure they had controls around their IT
11 infrastructure.

12 Q But, again, financial controls?

13 A Financial and, you know, like, security
14 controls, change controls. I mean, the whole IT
15 environment.

16 Q Okay. Not strictly focused on accounting
17 at that point?

18 A That's correct. Yes.

19 Q Okay. Gerber Scientific, what did you do?

20 A Gerber Scientific, I went in as the IT
21 auditor, and I ended up doing special projects.
22 Most of my work there was special projects,
23 operational projects.

24 At one point, I became the controller of a
25 start-up subsidiary. I ended up in accounting at

1 one point, and then I ended up in financial
2 reporting.

3 Q So you transitioned back into the
4 financial accounting through that -- in that job.

5 Is that right?

6 It sounds like you went in more
7 operationally, similar to what you were doing at
8 Echlin, and then ended up --

9 A I did a lot of things across the board at
10 Gerber. I did a lot of operational stuff. I did
11 a lot of accounting stuff. I ended up in finance
12 reporting.

13 We ultimately ended up working on a
14 project team. We had an SEC investigation at one
15 point when we were a public company, and I worked
16 on the team that worked with the outside
17 consultants.

18 That's kind of how I got into this
19 business.

20 Q Okay. And Centerprise?

21 A Centerprise was -- since I worked at
22 Gerber, I did some M&A work at Gerber as well, so
23 I had that kind of background. So that's kind of
24 where I got started in the litigation damage
25 support area, is Centerprise.

1 Q Okay. Do you remember whether you did
2 work on the valuation of public securities at
3 Centerprise?

4 A I don't recall at Centerprise. I know it
5 comes up on occasion. It's come up a number of
6 times throughout my history, but I don't recall it
7 with specific firms.

8 Q Okay. Willamette Management?

9 A Willamette is a boutique valuation firm.
10 That's all they do. So I worked for a guy at
11 Centerprise. He left and went to Willamette and
12 took me along with him.

13 Q And that was in -- not a
14 litigation-related firm? Was that more of a
15 business-related firm?

16 A We did both business valuation and
17 litigation support, so we were -- I worked for a
18 guy who was an expert witness.

19 Q Okay. Any work on public securities
20 there?

21 A Again, I don't recall that far back.

22 Q Okay. How about Anchin, Block?

23 A Anchin, Block & Anchin is an accounting
24 firm based in New York City. I worked in the
25 valuation litigation group. I did business

1 valuation, along with litigation support, there,
2 so I worked for someone who was a testifying
3 expert.

4 Q Okay. Any publicly traded stock issues
5 there?

6 A Yes.

7 Q Okay. And then BlumShapiro?

8 A BlumShapiro is a public accounting firm
9 based here in Connecticut. I worked in New York.
10 I was commuting from Fairfield into New York, so
11 they caught me at a bad commute day.

12 And I -- at some point I ran the
13 litigation valuation group at BlumShapiro as a
14 partner.

15 Q Okay. Did you do public securities work
16 there?

17 A There were also matters that involved
18 public securities at BlumShapiro.

19 Q That you worked on?

20 A Yes.

21 Q Okay. And then Management Planning, Inc.?

22 A Management Planning, Inc., is a boutique
23 valuation litigation firm.

24 Q Okay. And what do you do there? Is it
25 audits?

1 A I'm a managing director. I'm basically
2 the Connecticut office. I do litigation and
3 valuation for damage cases like this, divorce
4 cases, shareholder disputes. I do valuation work
5 for shareholder disputes. I do valuation work for
6 trust estate matters.

7 Q Is it strictly litigation related?

8 A No.

9 Q Okay. Do you think that your education
10 and work history qualify to you opine on the value
11 of publicly traded securities?

12 A We've done it a lot. It comes up a lot in
13 our practice, especially at Management Planning.

14 Q Do you think your education and work
15 history qualifies to you opine on it?

16 A Yes.

17 Q Okay. Are you offering any kind of an
18 opinion as to whether -- I'm going to refer to
19 "Mr. Orr" today and that's Terry Orr. That's the
20 expert that's been engaged by Dr. Goldberg.

21 And you've reviewed his report, and your
22 report is actually -- you provided a report in
23 rebuttal to that report.

24 So when I speak about "your report," I'm
25 going to be talking about your rebuttal report.

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1 Is that okay?

2 A That's correct.

3 Q Do you understand those terms?

4 A I understand. Thank you.

5 Q So are you offering an opinion as to
6 whether Mr. Orr's background and education
7 qualifies him to offer the opinions in his report?

8 I understand that you take issue with, you
9 know, some of his methodology and some of his
10 conclusions and things like that, but are you
11 opining on the sufficiency of his education and
12 work history?

13 MR. KAZAN: Object to the form.

14 THE WITNESS: I have no opinion on
15 his background.

16 BY MR. ZIMMER:

17 Q Okay. First of all, I want to get down to
18 exactly what you're doing in the report.

19 Are you offering any opinion or rebuttal
20 regarding legends that were placed on shares of
21 Navidea Biopharmaceuticals, Inc., that were
22 purportedly issued to Dr. Golberg by Navidea?

23 A No.

24 Q Are you offering any opinion or rebuttal
25 regarding the use of antidilution provisions in

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1 contracts calling for the issuance of specific

2 numbers of publicly traded shares?

3 A No.

4 Q Are you offering any opinion or rebuttal

5 regarding the valuation of an award to Dr. Golberg

6 of Navidea shares after it implemented a reverse

7 stock split in 2019?

8 MR. KAZAN: Object to the form.

9 THE WITNESS: I'm only offering an

10 opinion based on Mr. Orr's methodology of

11 valuing those shares. I have no comment

12 on anything else related to that.

13 MR. ZIMMER: We'll come back to that.

14 We'll come back to that after we ask some

15 questions on the main opinion.

16 BY MR. ZIMMER:

17 Q Okay. In your report, you take issue with

18 Mr. Orr because -- this is a quote -- he "fails to

19 consider the fact that Dr. Golberg claims that all

20 shares should have been issued as of August 14,

21 2018."

22 How do you feel that affects his opinion?

23 A He picks certain dates in his report, and

24 my opinion or my view is he should have --

25 Dr. Golberg indicated the shares should have been

1 issued on a certain date, which would have
2 triggered a time clock running.

3 So by choosing other dates, it doesn't
4 consider the fact that he -- Mr. Goldberg contends
5 that his shares should have been issued at the
6 date of the agreement.

7 Q Are you offering an opinion that the
8 shares should have been issued on August 14, 2018,
9 under the parties' agreement?

10 A No.

11 Q You know, just by way of background,
12 Dr. Golberg, Navidea Biopharmaceuticals, Inc.,
13 which I'll refer to as "Navidea," and Macrophage
14 Therapeutics, Inc., which I'll refer to as
15 "Macrophage," entered into a three-party contract
16 as of August 14, 2018.

17 You're aware of that. Right?

18 A I'm aware that they entered into an
19 agreement. Yes.

20 Q Okay. And I'm going to refer to that as
21 the "August 14 agreement."

22 Have you reviewed the agreement?

23 A I have, yes.

24 Q Okay. So you're not offering an opinion
25 as to when Dr. Golberg should have been delivered

1 shares under that agreement?

2 A No.

3 Q Okay. Are you aware that the agreement
4 provided for different time frames for different
5 numbers of shares to be issued to Dr. Golberg?

6 A Yes.

7 Q Okay. Did you see that the August 14
8 agreement provides that the shares Dr. Golberg was
9 to receive were to be issued pursuant to
10 Regulation D of the Securities Act of 1933?

11 MR. KAZAN: Object to the form.

12 THE WITNESS: I'd have to refer to
13 the agreement. I do recall something
14 along those lines.

15 BY MR. ZIMMER:

16 Q Are you offering an opinion as to whether
17 the shares issued to Dr. Golberg were issued in
18 conformity with Regulation D of the Securities Act
19 of 1933?

20 A I am not.

21 Q Are you familiar with Regulation D?

22 A From a layman's point, but it's a legal
23 issue.

24 Q Do you know whether Regulation D prohibits
25 immediate sale of securities issued to someone in

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1 Dr. Golberg's position at the time he left

2 Navidea? Are you aware that he was the CEO of

3 Navidea up until August 14, 2018?

4 MR. KAZAN: Object to the form.

5 THE WITNESS: That's what I recall.

6 But, again, the application of Regulation

7 D is a legal issue, and I have no opinion

8 on that.

9 MR. ZIMMER: Okay.

10 BY MR. ZIMMER:

11 Q Did you see that there was a provision

12 prohibiting the sale of shares issued pursuant to

13 the August 14 agreement for six months after their

14 issuance?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I would have to look at

17 the agreement, but that's what I generally

18 recall.

19 MR. ZIMMER: Okay.

20 BY MR. ZIMMER:

21 Q Did you incorporate that into your

22 opinions?

23 A I incorporated that into my calculation.

24 Yes.

25 Q Okay. And how so?

1 A I took the date at which Mr. Goldberg
2 assumed he should have his shares and we looked at
3 six months later when he could trade those shares.

4 Q And you used August 14, 2018, as a
5 starting point?

6 A Yes.

7 Q Are you aware that certain shares were not
8 supposed to be issued until January 1, 2019?

9 MR. KAZAN: Object to form.

10 THE WITNESS: Again, as I recall, I
11 took that into my analysis.

12 MR. ZIMMER: Okay.

13 BY MR. ZIMMER:

14 Q Are you aware that certain shares provided
15 for the August 14 agreement have never been
16 issued?

17 A Yes. I'm aware of that.

18 Q Does your report provide an opinion on the
19 value of those shares?

20 A We assumed they would have been issued
21 when they were supposed to be issued under the
22 agreement.

23 Q Okay. Do you know when they were supposed
24 to be issued?

25 MR. KAZAN: Object to the form.

1 THE WITNESS: I don't recall the
2 date. I remember it's in the agreement,
3 and that's the date we used. I don't
4 recall the exact date.

5 MR. ZIMMER: Okay.

6 BY MR. ZIMMER:

7 Q But it didn't affect your opinion that
8 they were never, in fact, issued?

9 A No.

10 Q Okay. Did you see that the August 14
11 agreement provides for 10 million shares to be
12 placed into an escrow account that would be
13 released under certain conditions set forth in the
14 agreement?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Yes. I do recall that.

17 BY MR. ZIMMER:

18 Q Did you take that into account in your
19 opinion?

20 A Yes.

21 Q How so?

22 A We assumed that those shares would have
23 been held for 18 months, in my opinion.

24 Q Are you aware that they still have not
25 been released from escrow?

1 A I am aware of that, yes.

2 Q Okay. Could Dr. Golberg sell shares
3 before they were issued to him?

4 A I'm not sure I understand the question.

5 Q Well, I'm trying to understand why you
6 used the August 14 date.

7 Are you aware that shares -- certain
8 shares were issued to Dr. Golberg in November of
9 2018?

10 A I am aware of that, yes.

11 Q Are you aware that no shares were issued
12 to Dr. Golberg on August 14, 2018?

13 A Yes. I'm aware of that.

14 Q So could he have sold the shares that had
15 not yet been issued to him between August 14 and
16 November of 2018?

17 A I assume that his shares would have been
18 issued on August 14.

19 Q Okay. And what was the basis for the
20 assumption?

21 A As I recall, he indicated that he thought
22 all of the shares should have been issued to him
23 on August 14.

24 Q Okay. Did you do any kind of research or
25 any -- have any conversations to determine whether

1 that was, in fact, the case?

2 A What do you mean? I don't understand the
3 question.

4 Q I mean, do you agree with his proposition
5 that they should have been issued on the 14th of
6 August 2018?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: I have no opinion on
9 that.

10 MR. ZIMMER: Okay.

11 BY MR. ZIMMER:

12 Q Did you know that the shares that were
13 issued in Dr. Golberg's name in November contained
14 restrictive legends?

15 A I do recall that, yes.

16 Q Okay. Did you review the legends?

17 A Only to the extent that Mr. Orr included
18 them in his report. I didn't look at the actual
19 stock legends.

20 Q Do you recall what the legends embodied?
21 What they said?

22 A Not the exact verbiage, no.

23 Q Well, do you remember -- do you recall the
24 implication of the legends? What the restrictions
25 were that they placed on the sale of the stock?

1 MR. KAZAN: I object to the form.

2 THE WITNESS: Not specifically, no.

3 MR. ZIMMER: Okay.

4 BY MR. ZIMMER:

5 Q Did you take that into account when you
6 did your valuation?

7 A My valuation takes into account that, A,
8 there was a six-month holding period; and B, some
9 shares were held for up to 18 months.

10 Q But it doesn't take into account that the
11 shares were issued with specific legends that
12 placed specific restrictions on the stock?

13 A Again, I have no opinion on the legends of
14 the stock.

15 Q Well, I understand you have no opinions on
16 the legends, because you said it, but your
17 analysis is an analysis of the impact -- well,
18 strike that. We'll get to that.

19 Okay. Do you know if the legends on the
20 shares that were issued in Dr. Golberg's name were
21 ever removed from the stock?

22 A My understanding, they were not.

23 Q Okay. Did that affect your opinion in any
24 way?

25 A No.

1 Q Why not?

2 A Because we assumed that, but for the
3 disagreement, the shares would have been issued on
4 August 14, and they would have run the course of
5 the -- whatever the agreement said.

6 Q Okay. Can you look at page 6 of your
7 report?

8 A Sure.

9 Q So you use two specific dates there. What
10 do those dates represent?

11 I'm sorry. I'm looking at the table at
12 the bottom of page 6, and there's -- there are two
13 dates listed on the row labeled "Sale Date."

14 What do those dates represent?

15 A So the first date is six months after
16 August 14, and the other is one year later. So
17 that would have been 18 months after.

18 Q Okay. And why did you pick those dates?

19 A Because the initial block of shares would
20 have been held for six months, and then there were
21 shares in escrow that would have been held for
22 18 months, which would put them at the
23 February 14, 2020, date.

24 Q Well, when you say "held," do you mean
25 they would have been restricted from sale or that

1 they would have only actually been held for that
2 period of time?

3 A Again, my understanding is they were held
4 in escrow. Whether they would have been
5 restricted for that period, I don't know. I can't
6 answer that.

7 Q But when you say they would have been held
8 for that time, what does that mean? What happened
9 when that time expired, in your opinion?

10 A My assumption is they would have been
11 available for sale at that period.

12 Q Available for sale.

13 Is it your assumption they would have been
14 sold on those dates?

15 A My assumption is they would -- they would
16 have been sold as soon as they were available for
17 sale.

18 Q And what's that assumption based on?

19 A It's just the first date it was available
20 for sale.

21 Q That's the only basis?

22 A That's the only basis, yes.

23 Q Did you do any research or any review of
24 Dr. Golberg's trading history in Navidea shares?

25 A No.

1 Q Did you do any research or background into
2 Dr. Golberg's ownership of Navidea shares?

3 A No.

4 Q Did you interview Dr. Golberg at all to
5 try to determine what he might have done with the
6 shares?

7 A No.

8 Q Okay. You just used the first date that
9 they could possibly be traded?

10 A Correct.

11 Q Okay. What was the basis for that?

12 A I assumed, when they were available, he
13 would have been able to sell them.

14 Q Well, I understand that it's probably a
15 fair assumption when they were available, he would
16 have been able to trade them.

17 What is the basis for the assumption that,
18 as soon as they became available, he would have,
19 in fact, traded them?

20 A I can't speculate to what he would have or
21 would not have done.

22 Q Okay. Do you know anything about
23 Dr. Golberg's financial condition?

24 A No.

25 Q Do you know if he had any need for funds

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1 that would have required him to sell the shares

2 immediately?

3 A No.

4 Q Okay. Do you know whether he held other

5 shares of Navidea?

6 A I don't recall.

7 Q Okay. Do you know whether he sold other

8 shares of Navidea?

9 A I don't recall.

10 Q You think you knew and you don't recall on

11 those last two questions, or you didn't -- well,

12 strike that.

13 Did you ever inquire whether Dr. Golberg

14 owned shares of Navidea other than the ones

15 relating to the August 14 agreement?

16 A I don't recall. I know I asked a question

17 of what his financial condition was.

18 Q Okay. And what did you get in response to

19 that?

20 A As I recall, he had ample resources. He

21 did not need the money.

22 Q Okay. Do you recall whether you asked

23 whether he owned other shares of Navidea, in

24 addition to the ones relating to the August 14

25 agreement?

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1 A That, I don't recall. I don't remember
2 him owning other shares.

3 Q Did you ask? Did you inquire whether he
4 owned other shares?

5 A I don't recall if I asked or not.

6 Q Okay. You don't think that would be
7 important to know?

8 A No.

9 Q Okay. And, again, are you aware of his
10 trading history in Navidea shares?

11 A No.

12 Q Okay. You're aware that he was the CEO of
13 Navidea up until August 14, 2018?

14 A Yes.

15 Q And were you aware that he was a board
16 member of Navidea up until August 14, 2018?

17 A Yes.

18 Q Do you know of Dr. Golberg's educational
19 background?

20 A No.

21 Q Do you know of his employment background?

22 A No.

23 Q Do you know whether he is familiar with
24 the financial markets?

25 A No.

1 Q Do you know how closely he monitors
2 Navidea stock?

3 A No.

4 Q Do you know how closely he monitors
5 Navidea share prices?

6 A No.

7 Q Okay. On page 7 of your report -- I'll
8 find the exact spot if you want, but I don't think
9 it's necessary -- you state, Navidea stock was
10 thinly traded in February of 2019 and February of
11 2020.

12 Can you define "thinly traded"?

13 A It means that not a lot of shares traded
14 on a daily basis.

15 Q Is there a formal definition of it?

16 A I don't know if there's a formal
17 definition. I think it's more of a generic term.

18 Q Is there a threshold that you would
19 analyze to see whether a stock was thinly traded
20 or not?

21 A I don't know if it would be a threshold or
22 it's more of a judgment call.

23 Q So what was the basis for your statement
24 that the stock was thinly traded in February 2019
25 and February of 2020?

1 A I looked at the daily trading volumes, and
2 they were very low.

3 Q Low relative to what?

4 A Relative to the number of shares
5 outstanding.

6 Q Okay. And did you apply any kind of
7 formula to determine that they were thinly traded?

8 A No.

9 Q It was your judgment?

10 A My judgment. Yes.

11 Q What was the judgment based on?

12 A Based on history -- my history of looking
13 at publicly traded stock.

14 Q What is that history?

15 A Well, I mean, in the valuation process --
16 and I've done hundreds of valuations, probably
17 thousands -- one thing you look at is public
18 companies, and you look at public companies in the
19 same industry.

20 And one of the things you eliminate from
21 your analysis is companies that do not trade
22 actively. They're thinly traded.

23 It also comes up from time to time when
24 you have to value thinly traded stock, such as
25 this, where you have lock issues, where you have

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1 liquidity issues.

2 Q Do you know whether Dr. Golberg sold any
3 Navidea stock in 2018?

4 A No.

5 Q Do you know whether Dr. Golberg sold any
6 Navidea stock in 2019?

7 A No.

8 Q Okay. Are you familiar with Navidea
9 Biopharmaceuticals' business?

10 A From a high level, generic level, yes.

11 Q What's your understanding of the business?

12 A They do -- I'd have to refresh my memory
13 from my report.

14 Q Take your time.

15 A I thought I included it in my report.

16 I know they do some kind of medical
17 technology. I don't know the exact nature of it.
18 I don't recall the exact nature.

19 Q Do you know if they manufacture anything?

20 A I don't recall.

21 Q Do you know if they sell anything?

22 A I know they have medical technology, but I
23 don't recall how they generate their revenue.

24 Q You don't know how they generate revenue?

25 A I don't recall, off the top of my head,

1 no.

2 Q Do you know for sure that they do generate
3 revenue?

4 A My understanding is they do. Yes.

5 Q Okay. Are you familiar with research and
6 development firms?

7 A Yes.

8 Q Do they typically generate a lot of
9 revenue?

10 A Some do, yes.

11 Q How do they do that?

12 A Usually, they either -- they're either
13 doing research and they get funding and they sell
14 something, or they do research for other
15 companies.

16 Q Do you know if Navidea does research for
17 other companies?

18 A Not that I'm aware of.

19 Q Okay. And, again, you don't know whether
20 or not Navidea sells anything?

21 A I don't recall, off the top of my head.

22 Q Okay. So you don't know whether Navidea
23 actually generate any revenue, do you?

24 MR. KAZAN: Object to the form.

25 THE WITNESS: Again, I don't recall.

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1 BY MR. ZIMMER:

2 Q Did you know at one time and you can't
3 remember?

4 A Yes. I knew at one time.

5 Q Did you know when you wrote your report?

6 A Yes.

7 Q Was it important to the opinions in your
8 report?

9 A In my report, I was looking strictly at
10 the stock price and when they could sell the
11 stock.

12 Q Did you look at all how Navidea's business
13 history affected its stock price?

14 A I know I looked at that at the time, but I
15 don't recall the answer.

16 Q Was it relevant to your opinion?

17 A No.

18 Q So your opinion as to when someone might
19 have sold the stock did not take into account the
20 nature of Navidea's business or the way that its
21 business history had affected its share price over
22 time?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: No.

25

1 BY MR. ZIMMER:

2 Q No, it did not?

3 A No.

4 Q Okay. Do you know whether announcements
5 by Navidea about its development programs have
6 affected its stock price throughout its history?

7 A As I recall, they did, yes.

8 Q And how did they affect the price?

9 A At some point, the price went up.

10 Q Explain what you mean by "at some point."

11 A As I recall, there was a period of time
12 when Navidea's stock was at its high point, and
13 Mr. Orr actually selected that period as part of
14 his damage.

15 Q But are you saying that -- I'm asking if
16 you're aware of whether announcements about
17 Navidea's business, over time, affected its stock
18 price.

19 Are you talking about one specific point
20 in time?

21 A At one specific time, but I am aware that
22 they had different announcements and it impacted
23 the price. Yes. I'm aware of that.

24 Q Okay. Have you researched what happens to
25 Navidea stock when it makes positive announcements

1 to the market about its development programs?

2 A No.

3 Q And, again, your opinion -- is it based on
4 the impact of Navidea's public announcements about
5 its development programs?

6 A No.

7 Q On its stock price?

8 A No.

9 Q Have you looked at any patterns in trading
10 volume for Navidea over time?

11 A What do you mean?

12 Q Well, have you -- in forming your
13 opinions, did you investigate any trends over
14 time -- over the history of Navidea's existence
15 with respect to its trading volume?

16 A Yes.

17 Q Okay. And did that affect your opinion at
18 all?

19 A We looked at trading history to determine
20 the extent of blockage in the market.

21 Q When you say, "blockage," does that go
22 back to the thinly traded issue?

23 A Well, at some point it's thinly traded,
24 but at some point it was not.

25 So in order to determine how much they can

1 trade at any point in time, you need to determine
2 how much is trading, so we have to look
3 historically at the trading volumes.

4 Q And what time period did you look at?

5 A We looked at it every -- at the different
6 periods Mr. Orr suggested they should trade and
7 the period when I suggested they should trade --
8 or could trade, I should say.

9 Q Did you notice any trends in the trading
10 history? I'm sorry.

11 Did you notice any trends in the trading
12 volume as it relates to the stock price?

13 A Over time, the volume increased, yes.

14 Q Okay. And what about stock price? Did
15 you notice any effect of trading volume on stock
16 price over time?

17 A The stock price generally went up as
18 trading volume went up.

19 Q Okay. On page 7, you start to discuss
20 this concept of blockage.

21 Can you just give me a description of the
22 concept of blockage?

23 A Certainly. Blockage is when you have a
24 large block of stock or a large volume of shares
25 and the market trades at a lower volume.

1 So any time you have a large block of
2 shares, you're going to have to do something to
3 keep from impacting the stock price when you're
4 selling those shares.

5 Q Any time. Has there ever been a time in
6 the history of -- I guess we'll talk about the New
7 York Stock Exchange, where sales of large volumes
8 of shares has not affected the price?

9 A That, I don't know.

10 Q Okay. Now, you say on page 7 that you'd
11 consider a private placement of publicly traded
12 shares to provide guidance on the reduction in
13 value resulting from a lack of liquidity.

14 Can you explain how a review of private
15 placement scenarios could instruct what would
16 happen to the publicly traded price of shares?

17 A Sure. We look -- somehow we need to find
18 public information on how trading restrictions
19 impact the price of stock.

20 So one of the things we look at are
21 private placements, and private placements are
22 private placements of restricted stock. And we
23 use that data for a number of different purposes
24 in our firm.

25 So that gives us some market evidence of

1 what a lockup in the stock would be.

2 Q Do you assume that these shares would have
3 been sold while they were subject to a lockup?

4 A Well, restricted shares can be sold at a
5 private placement, is my understanding, and
6 they're sold -- they're sold while they have
7 restrictions.

8 So the shares are sold typically at a
9 discount to reflect the fact that there are
10 restrictions on the trading.

11 Q I thought you said that blockage relates
12 to selling large quantities of stock and its
13 effect on its share price.

14 A That's true. It does.

15 So when you have a large quantity of
16 stock, you need to dribble that stock out into the
17 market over time. So that time when it takes you
18 to dribble that stock out basically becomes a time
19 when you don't have access to your money.

20 So it's the same thing where you have a
21 restriction. You can't trade all of your shares
22 today, so you have to dribble them out over time.

23 So what we do is we calculate what is that
24 time to basically divest that block of shares, and
25 that becomes -- we consider that a lockup.

1 Q But the premise of your application of the
2 private placement information is that selling a
3 large quantity of shares will necessarily depress
4 the price of the stock?

5 A I'm not sure I understand. Can you repeat
6 that? I'm sorry.

7 MR. ZIMMER: Is it possible to read
8 it back?

9 THE COURT REPORTER: Certainly.
10 (The last question was read
11 back by the court reporter.)

12 THE WITNESS: No. The premise of
13 using private placement data is to have
14 some sort of market evidence about the
15 impact of trading restrictions or, to put
16 it another way, a time to realize
17 liquidity from the share of stock.

18 So if you have a large block of
19 stock, you have to dribble it out. That
20 takes time. If you have a private
21 placement, there are restrictions on that
22 stock. They have to wait for those
23 restrictions to end.

24 BY MR. ZIMMER:

25 Q And that was my question.

1 What you just said is that, if you have a
2 large block of stock, you have to dribble it out
3 over time.

4 A Correct.

5 Q You made an assumption that any time a
6 large quantity of stock is sold, it depresses the
7 market price, and you were looking to use the
8 private placement information to inform what the
9 impact might be.

10 MR. KAZAN: Object to the form.

11 BY MR. ZIMMER:

12 Q Is that correct?

13 A Yes. We were using the private placement
14 data for some market evidence of what the
15 quantity -- or how to quantify that discount or
16 haircut that someone would take on that stock if
17 they had to trade it.

18 Q But the starting point was an assumption
19 that there had to be some reduction in price.

20 Correct?

21 A Yes.

22 Q And you're just looking for something that
23 could help you quantify what you assume would be a
24 necessary reduction in the price. Correct?

25 A Correct.

1 MR. KAZAN: Object to the form.

2 THE WITNESS: I'm sorry.

3 BY MR. ZIMMER:

4 Q What made you choose this model, a private
5 placement model, to try to predict the effect of
6 high-volume sales on publicly traded shares?

7 A There's not a lot of market evidence out
8 there, so you can look at other big placements.
9 That data isn't as good as what we have here in
10 our private placement model.

11 Q But that data related to publicly traded
12 shares. Right? Public stock price?

13 A Yes.

14 Q So how could direct data about the public
15 price of shares be less relevant than information
16 about private placements that doesn't involve
17 publicly traded price of the stock?

18 A That's not true. Private placements are
19 public -- they're public shares that are sold.
20 They just are restricted shares. So those are
21 public shares.

22 Q But did you attempt to -- first of all,
23 did you develop your analysis for this assignment?

24 A What do you mean?

25 Q You refer to a specific methodology you

1 used, the MPI Restricted Stock Study, on page 8.

2 Was that study conducted for purposes of
3 this case?

4 A No.

5 Q This was kind of an off-the-shelf model
6 that you had that you decided to use in this case?

7 A We use this model for -- every time we're
8 trying to determine a lack of marketability.

9 Q Okay. Are there other models out there?

10 A Yes.

11 Q Did you apply any of the other models in
12 this case?

13 A No.

14 Q Did you do any kind of observation on
15 actual trading volume of public shares and the
16 impact on stock price?

17 A We looked at trading volumes -- we looked
18 at large blocks. The problem is, there's not a
19 lot of them out there, so you don't have a lot of
20 data to go by.

21 Q Okay. But did that data yield the same
22 result as your study?

23 A No. They were much higher.

24 Q What was much higher?

25 A If you look at the actual trading of large

1 blocks of stock, it's much higher.

2 Q What is much higher?

3 A 90 percent.

4 Q No. I don't understand. What is much
5 higher?

6 A If you look -- if you look at trading
7 transactions -- if you go back five or ten years
8 and you look at large blocks of stock, say, you
9 know, 90 percent or more of the company's
10 outstanding shares trading in a transaction, you
11 find the discount applied to that transaction is
12 about 90 percent.

13 Q Why did you pick 90 percent of a company's
14 stock being traded in that example you just gave?

15 A Because if you look at -- for example, in
16 the biggest volume of shares -- if we look at
17 page 7 of my report, on February 14, 2019, we were
18 talking about 13,500 shares, and outstanding
19 shares were only 10 million.

20 Q 13 million -- you're talking about 13 --

21 A 13,500,000. The outstanding shares of the
22 company were only 10 million. So that's a big
23 block of the stock.

24 Q But if you're talking about February 14,
25 2019, that's after August 14, 2018. Right?

1 A That's six months later.

2 Q So how could the total number of shares
3 outstanding be less than the number that's
4 outstanding and in Dr. Golberg's possession?

5 The market was aware of the August 14
6 agreement. Correct?

7 A My understanding is Dr. Golberg's shares
8 were not registered, so the 10 million is only
9 registered shares that are trading on the market.

10 Q Okay. So the 10 million number that
11 you're using here is the number of registered
12 shares?

13 A Correct.

14 Q Okay. Are you aware that the August 14
15 agreement was announced publicly by Navidea?

16 A I don't remember if I knew that.

17 Q Are you aware that the issuance of
18 shares -- of 13 and a half million shares in
19 Dr. Golberg's name was publicly disclosed by
20 Navidea?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: That's what I recall.

23 Yes.

24 BY MR. ZIMMER:

25 Q Is there any reason why the market

1 wouldn't understand that there were, in fact, you
2 know, 10 -- you know, 23,514,540 shares that could
3 potentially be traded?

4 A The market -- the actual trade -- the
5 actively traded shares was 10 million shares.

6 Q I understand. But if someone were looking
7 to seriously trade in Navidea shares and did any
8 kind of research on the company, they would easily
9 identify that, in addition to the 10 million-plus
10 registered shares, there were at least -- there
11 may have been others, but there were at least
12 13,500,000 shares in Dr. Golberg's name.

13 Wouldn't that information be priced into
14 the market already?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I can't speculate. I
17 don't know.

18 BY MR. ZIMMER:

19 Q You don't know?

20 A I don't know.

21 Q Okay. Does the market ever price in
22 publicly disclosed information?

23 A At times.

24 MR. KAZAN: Object to the form.

25 THE WITNESS: I'm sorry. At times.

1 BY MR. ZIMMER:

2 Q Isn't one of the premises of capitalism
3 and public securities markets that information is
4 incorporated efficiently into pricing?

5 A Theoretically, yes.

6 Q Okay. Did you take that into account,
7 that the market may have already priced in the
8 fact that it was well aware that all of these
9 shares were available for trading as of a certain
10 date?

11 A No.

12 Q You didn't.

13 Are you aware that the August 14 agreement
14 was actually disclosed in a publicly filed press
15 release by Navidea so that anyone could look at it
16 and understand -- or at least read when these
17 shares would become publicly available?

18 A I don't recall. I may have. I don't
19 remember.

20 Q Okay. Did you take that into account when
21 you did your analysis?

22 A No.

23 Q Okay. So does your firm have other
24 models, other than the MPI Restricted Stock Study?

25 Is that a proprietary model that it's

1 developed?

2 A That's a proprietary model. Yes.

3 Q Has it been peer reviewed?

4 A Yes.

5 Q Has it been peer reviewed for the purpose
6 you used it for here; in other words, using
7 private placements as a proxy for a large volume
8 of trading into a publicly traded share?

9 A We've used this before, yes, for things
10 for the IRS. Yes.

11 Q Has it been peer reviewed for that
12 purpose?

13 A I don't know the answer to that.

14 Q Okay. Do you know what purpose it was
15 peer reviewed for?

16 You know that it was peer reviewed.
17 Right? You said that?

18 A That's what I recall. I'd have to
19 double-check that fact, though.

20 Q So you're not positive it was peer
21 reviewed?

22 A I'd have to check that fact. I know it
23 was published in an article.

24 Q Okay. Can you check that and let me know?

25 A I'll let you know. Yes.

1 Q Okay. And also let me know whether it was
2 used in this way, to predict the public price of
3 shares.

4 A Okay.

5 Q Does low trading volume in a stock
6 necessarily indicate low demand for the stock?

7 A I don't know the answer to that.

8 Q Okay. Is it possible that owners of
9 closely held stock don't often offer the stock for
10 sale rather than that nobody wants to buy it?

11 MR. KAZAN: Object to the form.

12 THE WITNESS: I'm not sure I
13 understand that question.

14 BY MR. ZIMMER:

15 Q So if a -- do you know -- did you do any
16 research into how widely held the Navidea shares
17 are?

18 A In terms of the 10 million outstanding?

19 Q Yes.

20 A No.

21 Q Okay. Do you have any idea whether those
22 shares are owned in large blocks?

23 A That, I don't know.

24 Q Do you know whether other nonregistered
25 shares of Navidea were sold in large blocks?

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1 A No.

2 Q Were you aware that certain investors made
3 large purchases of Navidea shares between
4 August 14, 2018, and January of 2019?

5 A Public shares?

6 Q Restricted shares, I believe.

7 A No. I'm not aware of that.

8 Q Okay. Did you review all of Navidea's
9 public disclosures during the relevant time
10 period?

11 A No.

12 Q Did you review any of them?

13 A Not that I recall. Maybe very few.

14 Q Okay. So the question was, If you have a
15 stock with a low trading volume, is it possible
16 that people just don't want to sell the stock and
17 that's why it's not trading as opposed to no one
18 wants to buy it?

19 MR. KAZAN: Object to the form.

20 THE WITNESS: Again, I can't
21 speculate why a company would have low
22 trading volume.

23 MR. ZIMMER: Okay.

24 BY MR. ZIMMER:

25 Q But will you acknowledge that it's

1 possible that low volume might be explained by a
2 lack of supply as opposed to a lack of demand?

3 MR. KAZAN: Object to the form.

4 THE WITNESS: Again, it's possible.

5 I can't speculate.

6 BY MR. ZIMMER:

7 Q You don't know?

8 A I don't know.

9 Q Did you do any research into that?

10 A I don't know if there's any way to
11 research that.

12 Q Okay. Does your firm have any models that
13 would be able to analyze that?

14 A No.

15 Q Okay. Did you consider trying to analyze
16 that?

17 A No.

18 Q Okay. So how does -- first of all, do you
19 know the sample size for your -- I'll call it the
20 "MPI study," shorthand, and I'll be referring to
21 the MPI Restricted Stock Study that you referred
22 to by name in bold on page 8 of the report.

23 But I understand that's what you're
24 discussing throughout pages 7 and 8. Correct?

25 A Yes.

1 Q So do you know the sample size for the MPI
2 study? How many private placements it considered?

3 A Not off the top of my head, but I can get
4 you that information.

5 Q Okay. Do you know what types of
6 restricted shares were involved in those private
7 placements?

8 A What do you mean?

9 Q In other words, what types of restrictions
10 were on the shares?

11 A They were restrictions that were subject
12 to Rule 144.

13 Q Any other restrictions?

14 A No.

15 Q Okay. And that was for every share that
16 was part of these private placements?

17 A Yes.

18 Q Do you know the volume of shares relative
19 to the publicly registered shares in each one of
20 those private placements?

21 A No.

22 Q Were each one of the private placements
23 involving shares that were, in fact, publicly
24 traded?

25 A Yes.

1 Q Okay. How did your methodology work? I
2 mean, what is -- what are the steps in the process
3 of analyzing a private placement and then
4 determining how that would affect the public price
5 of the shares?

6 A What do you mean? For each stock in the
7 study or in general?

8 Q The methodology for the study.
9 Did you help develop the MPI study?

10 A No.

11 Q Okay. Do you understand how it works?

12 A Yes.

13 Q Can you explain it?

14 A So, essentially, we look at a number of
15 restricted stock transactions. From that
16 restricted stock, we look at -- they use a
17 multivariant regression analysis to determine
18 trends in that data.

19 And what our study does is, we take those
20 trends and apply a specific stock data to that
21 analysis via regression to determine what the
22 predicted -- basically, you look for a predicted
23 price against our median price of our study to
24 determine the discount.

25 Q Median publicly traded price?

1 A So what we do is we try to calculate the
2 median price at which a transact -- a replacement
3 transaction would occur based on the regression
4 analysis of our data points.

5 Q But when you say, "median price," relative
6 to what?

7 A If you look at the median price of our
8 entire study, and then we determine the specific
9 price. So if we take our -- the data from a
10 specific company and apply it to our model, it
11 comes out with a price at which they predict would
12 be the price a transaction that particular company
13 would occur based on our model. When you compare
14 that against the median price of our model, the
15 delta is -- determines the discount.

16 Q Do you know whether Navidea was one of the
17 companies' shares that were included in your
18 review?

19 A I do not.

20 Q Did you do any kind of an analysis to
21 compare Navidea's trading history to the trading
22 history of the shares that were involved in the
23 study?

24 A Yes.

25 Q And how did they compare?

1 A Well, if you look at -- I don't know about
2 the trade history basically, but volatility is one
3 of the --

4 Q Well, you said, "Yes."

5 Did you compare the trading history?

6 A Trading --

7 Q Because I asked you about trading history
8 only because you said yes, so --

9 A Trading history -- we looked at historical
10 trading history to determine the amount of time it
11 would take to dribble out the stock.

12 Q But did you look at Navidea's historical
13 publicly traded pricing information and compare
14 that to the companies whose shares were involved
15 in the private placements that are part of your
16 study?

17 A Only to the extent to calculate volatility
18 of Navidea stock.

19 Q Okay. So you don't know if in the --
20 strike that.

21 Do you know whether any of the stocks that
22 were the subject of the private placements
23 incorporated into the MPI study were
24 biopharmaceutical companies?

25 A Not off the top of my head, no.

1 Q Do you know whether any of the stocks that
2 were included in the private placements that were
3 part of the MPI study were research and
4 development companies?

5 A Not off the top of my head, no.

6 Q Do you know anything about the types of
7 companies that were involved in those private
8 placements?

9 A It's been a long time since I've looked at
10 that study, so I can't -- I don't recall.

11 Q How long?

12 A When I first got the MPI, which was three
13 years ago.

14 Q You didn't revisit in connection with this
15 report?

16 A No.

17 Q Okay.

18 THE WITNESS: Can we take a
19 ten-minute break?

20 MR. ZIMMER: Sure. Absolutely.

21 (A recess was held off the record.)

22 MR. ZIMMER: Back on the record.

23 BY MR. ZIMMER:

24 Q So I'm going to skip around a little bit,
25 but on page 10, on page 11, you give pretty

1 detailed tables -- on page 10 and 11 of your
2 report, you give pretty detailed tables about the
3 blockage discount. And on page 10, there's a
4 table in there that's "Blockage Discount for
5 February 14, 2019."

6 And what I'm trying to understand is -- I
7 mean, can you just explain, in layman's terms,
8 what it is you look at about the private
9 placements and how you use that to predict, you
10 know, outcomes in other contexts?

11 A Sure. So if you look on Table -- on
12 page 10, there's a table. What we find, over
13 time, is that there's some drivers to price and
14 things that matter. One of the biggest things is
15 volatility.

16 So if you see -- at the top, you'll see
17 Volatility, and it's really two things:
18 volatility and time to liquidate. So those two
19 factors are the two biggest factors.

20 Q Are you talk -- I apologize.

21 Are you talking about the table at the
22 top? I'm happy to hear your explanation.

23 So you're referring to Table --

24 A No, no, no, no. At the bottom. I'm
25 sorry. So there's a table at the bottom. If you

1 look, it says, "Log Guideline Company Volatility."

2 Q Where do you see that?

3 A At the very top. It says, "Log Guideline

4 Company Volatility" at the top.

5 Q Yes.

6 A Median: 25th percentile, 75th percentile.

7 And then, below that, you'll see Time

8 Period. So those two pieces are the biggest

9 driver of a discount. So, essentially, that is

10 how volatile is the stock, and how long does it

11 take to trade that stock or get rid of that stock.

12 Q Okay. So explain to me -- so now that I'm

13 with you, you have -- at the very top of that

14 chart, below the shaded area, you have Log

15 Guideline Company Volatility.

16 What does that mean? Is that an

17 instruction to the user to log the volatility, or

18 what does "log guideline" mean?

19 A "Log" is a logarithm, so basically you put

20 everything in logarithm to do the calculations,

21 but if you look at this -- do you see the

22 82.2 percent?

23 Q Yes.

24 A That is the volatility of Navidea stock at

25 that time.

1 Q Oh, at what time? Over what time period?

2 A At the -- we go back five years, but if
3 you look at as of February 14, 2019, if you take a
4 five-year median volatility, it's 82.2 percent.

5 So this stock has a very high volatility.

6 Q Okay. And what five-year period?

7 Are you talking about going back from the
8 date of your report or going back from February
9 14, 2019?

10 A February 14, 2019.

11 Q Going back five years?

12 A Yes.

13 Q Okay. Do you know whether Navidea's
14 business changed over that time period?

15 A Over the last previous five years?

16 Q Yes.

17 A I'm sure it did.

18 Q Okay. Did you look into that at all?

19 A No.

20 Q Did you do anything to determine whether
21 that historical volatility might have changed as a
22 result of business changes at the company?

23 A We look at volatility usually one year,
24 five years. We look at it over different periods
25 of time.

1 Q Okay.

2 A So what we found is the five year was

3 actually lower than the one year.

4 Q Okay. And you use five year?

5 A We typically look back five years.

6 Q Okay. All right. Now, when you say,

7 "Market Cap Time Period" -- well, explain this to

8 me: So now you say -- in the Comments section, it

9 says, "We default to the volatility of Navidea

10 stock." What does that indicate?

11 A We used Navidea's stock volatility.

12 Q Okay. What else could you possibly use?

13 A In our -- a lot of the work we do is

14 private companies.

15 Q Okay.

16 A So in private companies, you do not have a

17 stock price, so you have to look at the market in

18 general. So typically what we'll do is we'll go

19 look at other companies in that market and use

20 that volatility.

21 But in this case, we have Navidea stock.

22 So we have their volatility, so we use that

23 volatility.

24 Q So the private placements involved in the

25 MPI study are typically nonpublicly traded shares?

1 A No. They're publicly traded shares. We
2 apply that data to nonpublicly traded companies.

3 Q Oh, I see. So if you were going to use
4 this in another context and that context involved
5 a nonpublicly traded company, you would use
6 some -- you wouldn't be able to use the actual
7 trading volatility?

8 A That's correct.

9 Q You'd use a proxy for that?

10 A That's correct.

11 Q But here you use the actual Navidea.

12 Okay.

13 Now, there is a listing for 25th
14 percentile, 75th percentile, and I see -- you
15 know, there's NA and 0 percent. It doesn't seem
16 to be used here.

17 Why is that -- why it is there, and why
18 isn't it used?

19 A We used the median because that's, you
20 know -- we typically always use the median.
21 Sometimes you use the 25 or 75 percentile, but in
22 this case, we just used the median because we used
23 the actual stock.

24 Q Why would you use the 25th or 75th
25 percentile?

1 A If you were doing a private company, you
2 would look at it versus the market, and you may
3 decide that, hey, it's lower than the market or
4 higher than the market. Typically, we always use
5 the median.

6 Q Okay. And then the Log Market Cap Time
7 Period, it says, "We use Time Period I, as
8 closely-held securities are most similar to
9 pre-1990 restricted transactions with regard to
10 the potential holding period."

11 What does that mean?

12 A So if you look at Rule 144 over time, the
13 holding period changed. So we break it down into
14 four time periods: Period I is pre-1990, which
15 was a two-year holding period plus a piggyback
16 provision. So if you sold your stock --
17 restricted stock during the restriction period,
18 basically the clock would start over, so it could
19 be longer than the two-year restriction.

20 After 1990, that restriction went down to
21 two years. They took away the piggyback
22 provision.

23 It was in '96, I think -- at some point
24 they made it a one-year provision. And then, more
25 recently, they made it a six-month provision,

1 which is what it is currently.

2 So the six-month provision is Time Period

3 IV. The one-year provision is Time Period III.

4 The two-year provision without a piggyback is Time

5 Period II. And Period I is the provision where

6 it's two years, plus there's a -- there could be a

7 piggyback provision where, if you sell your stock,

8 there's additional time.

9 Q Is this what's reflected on page 9 in the
10 table: pre-1990, 1990 to 1997?

11 A Exactly, yes.

12 Q Some of those time frames are a little
13 different from what you said.

14 A I should have referred to the chart. I
15 apologize.

16 Q Okay. This says, "Use Time Period I,"
17 which is pre-1990, but obviously, we're talking
18 about shares that you're assuming were issued in
19 August of 2018.

20 Why would you use the pre-1990 time period
21 and -- well, let me just strike that because I
22 have a question I want to ask first.

23 Time Period IV in the chart -- it says
24 "2008." The rest of them are, you know, time
25 periods. Does Time Period IV actually cover 2008

1 onward?

2 A Correct. Yes.

3 Q Okay. So you're looking at shares that
4 were assumed to be issued in August of 2018.

5 Right?

6 A Yes.

7 Q So why would you use a pre-1990 time
8 period? I don't understand -- first -- strike
9 that.

10 First, explain to me what the time period
11 refers to. How is that relevant to the chart on
12 page 10? Does that refer to the holding period,
13 the "time period"?

14 A The time period is the holding -- we use
15 the time period to estimate a holding period.
16 So -- let me go back.

17 So the first thing we do is figure out, if
18 they dribbled out the stock, how long it would
19 take them to dribble it out to not impact the
20 price of the stock. And, from that, we come up
21 with a number.

22 So, for example, in the first case, if you
23 look at the top of page 10, we assume it was going
24 to be 53 quarters to sell that block of stock if
25 we dribbled it out over time.

1 Q But when you say it was going to be
2 53 quarters, do you assume that and then do
3 something with your model, or is your model
4 designed to come up with that number?

5 A No. We calculate that number and then put
6 that result into our model.

7 Q So how do you get to the 53-quarter
8 number? How do you assume -- you said you assume
9 that. How do you arrive at that number?

10 A So if we look at daily trading volume --
11 so at the top of page 10, you'll see it says,
12 "Daily Trading Volume 27,156."

13 Q Right.

14 A We assume you can trade 15 percent of the
15 daily trading volume at any point in time and not
16 impact the price.

17 Q Okay. But why wouldn't you be able to
18 trade 100 percent of the daily trading volume and
19 not impact the price if the price is based on the
20 sale of 100 percent of the shares sold on that
21 day?

22 A What we're saying is if you put an
23 additional 100 percent of the shares in the
24 market, that would impact the price.

25 Q So you're effectively saying 115 percent

1 trading volume?

2 A You can do 115 percent trading volume on
3 that day. You can do 27,000 plus another 4,000
4 shares and not impact the price.

5 Q And how did you come up with the
6 15 percent?

7 A Our firm, based on what we do -- because
8 we do a number of these studies for a number of
9 purposes. We talk to banks, people who are
10 trading, and we ask them, "What's your view? How
11 much can you put in the market?" And that's the
12 general consensus we found, is between 10 and
13 15 percent.

14 Q You say "we." You mean people that work
15 for MPI?

16 A Yes.

17 Q Okay. So what was the process you used?
18 Did you poll people in the office?

19 A I talked to a number of the people in the
20 office, I've talked to bankers myself, and I've
21 also talked to a number of the people in the
22 office, saying, "What's your experience?"

23 And they said, basically, "We talked to a
24 number people in the industry, and this is what we
25 found."

NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.
William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

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1 Q And that was in connection with this
2 engagement, or that's a number you generally use?

3 A That's a number we generally use.

4 Q Okay. Did you look at all at Navidea's
5 trading volume history versus its stock price
6 history to determine whether the 15 percent was
7 appropriate to apply to Navidea?

8 A I did look at their trading history and
9 their stock price history, and I didn't see
10 anything that would make me disbelieve the
11 15 percent.

12 Q What were you looking for to see that
13 might have led you to believe that the 15 percent
14 would not be appropriate?

15 A I mean, 15 percent -- generally speaking,
16 15 percent is the number we use because we assume
17 that number will not impact the price. So there
18 could be days when they trade more and it does
19 impact the price a little bit. You just don't
20 know. So we try to use a market -- a general
21 market guideline, which is the 15 percent.

22 Q Is the general market guideline published
23 somewhere?

24 A No.

25 Q Did you use some kind of a study to arrive

1 at it, or is it anecdotal input from different
2 sources?

3 A It's just anecdotal input from various
4 banks that we talked to.

5 Q Do you know if any of them were familiar
6 with Navidea's trading history?

7 A No.

8 Q And, in fact, you didn't ask anyone,
9 specifically for this engagement, about this.

10 Right?

11 You used the number that's an in-house
12 number that you use across the board?

13 A It's a number we've derived over a number
14 of years of conversations with traders.

15 Q But you use it across the board on your
16 engagements?

17 A Yes.

18 Q Okay. And are all companies -- strike
19 that.

20 Is the impact of trading volume on share
21 price uniform across all publicly traded
22 companies?

23 A No.

24 Q Okay. So in the chart on page 10 --
25 well, I will call the -- what do you want to call

1 it? Just so we're talking about the same thing.

2 At the top, there's Daily Trading Volume,

3 et cetera, and that looks like maybe a table?

4 A Let's call it "top" and "bottom." That's

5 easier.

6 Q Okay. At the bottom -- the bottom table

7 or chart, you know, you say, you know, sometimes

8 you use 25th percentile; sometimes you use 75th

9 percentile.

10 But in this case, Navidea was a publicly

11 traded company, so you could use its actual

12 volatility. You didn't have to assume anything.

13 Right?

14 A That's correct. Yes.

15 Q Okay. And then, for the time period --

16 explain to me again why you think that a pre-1990

17 time period is most relevant to shares issued in

18 2018.

19 A Certainly. If you go look at the time

20 period -- that period of time, the market is when

21 shares had the largest lockup or the largest

22 period of time when they couldn't trade them.

23 Q Right.

24 A So right now, it's only six months.

25 Q Right.

1 A But these shares were locked up longer
2 than this.

3 Q Which shares?

4 A Well, we calculated -- for example, at the
5 top of page 10, we calculated 53 quarters to
6 dribble out the Navidea shares at that point in
7 time, which was -- I should have had a header on
8 this. That's the February 14.

9 So as of February 14, to dribble out
10 13,500,000 shares, it would have taken them
11 53 quarters.

12 Q Well, you assumed it would take them
13 53 quarters because you applied a 15 percent
14 number that you apply across the board to all of
15 your engagements at this time. Right?

16 A That's correct. Yes.

17 Q Regardless of the industry that the
18 company is in?

19 A Correct.

20 Q Regardless of the company's prior trading
21 history?

22 A Correct.

23 Q Okay. How do you justify that?

24 A That's the number -- that's the number
25 we've been using. That's what we understand is

1 the threshold to not impact the stock price.

2 Q But you're saying that, in every single
3 publicly traded company, if they traded
4 16 percent, it would decrease it, and if they only
5 traded 14 percent, it wouldn't?

6 MR. KAZAN: Object to form.

7 BY MR. ZIMMER:

8 Q What basis do you have to say that this
9 number is appropriate for every publicly traded
10 stock?

11 A I mean, every publicly traded stock is
12 going to have its individual characteristics;
13 however, as a general rule, we use -- we use the
14 15 percent. There's no way to know what it would
15 be otherwise.

16 Q Well, you can argue that you should strike
17 the word "otherwise" from your statement,
18 but . . .

19 The 15 percent, to be clear, is not an
20 engagement-specific number. Correct?

21 A That's correct.

22 MR. KAZAN: Object to the form.

23 BY MR. ZIMMER:

24 Q And it's not a company-specific number.

25 Right?

1 A Correct.

2 Q And it's not investor-specific; in other
3 words, the person holding the shares and how they
4 might go about trading the shares.

5 Right?

6 It's not related to that? Right?

7 It's not individualized to any person.

8 Right?

9 A Not individualized to any person. That's
10 correct.

11 Q Okay. And is it individualized to any
12 type of restrictions?

13 A No.

14 Q Okay. And it's not based on any
15 methodology. It's based on anecdotal inquiries to
16 certain people inside and outside of your firm.

17 Correct?

18 MR. KAZAN: Object to form.

19 THE WITNESS: It's based on inquiries
20 to trading people in the trading industry.

21 BY MR. ZIMMER:

22 Q Do you know who?

23 A I don't know.

24 Q Is there a list somewhere?

25 A Not that I'm aware of. I don't know.

1 Q Okay. And do you know if those people
2 have experience in the biopharmaceutical area?

3 A That, I don't know.

4 Q Do you know whether they have experience
5 in trading a startup -- sorry, a research and
6 development company?

7 A I don't know.

8 Q Do you know anything about the people that
9 these numbers came from?

10 A No.

11 Q And did you talk to any of them yourself?

12 A No.

13 Q And how long has the 15 percent number
14 been used, to the best of your knowledge?

15 A For years. I don't know that.

16 Q Five years? Ten years? Two years?

17 A Probably at least five, maybe ten years.

18 Q And is there any chance that the market
19 principles or, you know, trading concepts may have
20 changed over that period of time?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: It's possible.

23 BY MR. ZIMMER:

24 Q Do you know whether anything's been done
25 to update that number?

1 A Not that I'm aware of, no.

2 Q Okay. So now, when you go down to the
3 table at the bottom of page 10, you said, you
4 know -- for example, for the volatility, there's a
5 median, there's a 25th percentile, there's a 75th
6 percentile.

7 Am I correct in my understanding that you
8 were saying that, for nonpublicly traded
9 companies, you might make an adjustment to the
10 25th percentile or the 75th percentile based on
11 the characteristics of the company?

12 A That's correct. Yes.

13 Q Okay. But because Navidea was a publicly
14 traded company, you went with the actual data
15 that's available -- right? -- on Navidea and went
16 with the median volatility for Navidea. Correct?

17 A That's correct. Yes.

18 Q Is there a reason why you didn't do the
19 same thing: go back and calculate a number
20 different than the 15 percent you've been using
21 for the last ten years -- since you had actual
22 market data on Navidea -- for that purpose too?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: No.

25

1 BY MR. ZIMMER:

2 Q Could it have been done?

3 A I don't know.

4 Q Could you have at least asked people if
5 they were familiar with Navidea or asked them to
6 familiarize themselves with that and give you
7 their opinion as to what the daily trading
8 percentage that would affect stock price would be?

9 A We didn't -- we didn't look at that. I
10 don't know if we could or not.

11 Q You don't know whether you could have
12 asked traders to --

13 A Asked traders?

14 Q Well, you said you spoke to traders --
15 well, I'm not trying to put words in your mouth,
16 and it will be clear what you said.

17 My understanding of what you said was
18 that, at some point in time, possibly up to ten
19 years ago, people at your firm spoke to stock
20 traders to get their input to determine what the
21 percentage of daily trade in the top chart on
22 page 10 should be, and that number is intended to
23 represent the maximum additional volume of shares
24 that can be sold on any given day without
25 affect -- downwardly affecting stock price.

1 Is that correct?

2 A That's correct.

3 Q Did you go to any traders for purposes of
4 this engagement and ask them whether they were
5 familiar with Navidea or ask them to familiarize
6 themselves with Navidea and let you know if there
7 was a better estimate than the 15 percent?

8 A No.

9 Q Okay. Now, if I understand correctly,
10 using that 15 percent number, you came up with
11 53 quarters to sell the 13,500,000-share block of
12 Navidea. Correct?

13 A Correct.

14 Q And that, and that alone, is what leads
15 you to select Time Period I. Right?

16 Because you're saying that, Our estimate
17 is that it would take a really long time, so
18 therefore, we look at the time period with the
19 longest restrictions. Right?

20 A Correct.

21 Q Was there anything about the MPI study
22 that indicated that the pre-1990 would be
23 relevant, other than your assumption of 15 percent
24 that leads to a 53-quarter time period?

25 A No.

1 Q Okay. So there's nothing about the
2 restrictions on the actual shares that were issued
3 in Dr. Golberg's name that led you to use Time
4 Period I?

5 A No.

6 Q And there was nothing about Navidea's
7 trading history that led you to use Time Period I?

8 A No.

9 Q Okay. Is your study broken down by
10 these -- I see five time periods here in the chart
11 on the bottom of page 10 and only four in the
12 table on page 9 that talks about time periods.

13 I see Time Period 1, 2, 3, 4, and here I
14 see Time Periods Roman numeral I, Roman numeral
15 II, Roman numeral III -- oh, I'm sorry. My
16 apologies. There's four. Strike that.

17 Is it the case -- I'm just trying to
18 understand -- that, using the MPI model, you can
19 segregate the time periods: use only the Time
20 Period I information or use only the Time Period
21 II or Time Period III?

22 A Yes.

23 Q Is that how it works?

24 A Yes.

25 Q Are you able to use more than one time

1 period, or would you have to do that separately

2 and then blend the results?

3 A You have to use one period at a time.

4 Q Okay. And this is really sort of like

5 a -- for lack of a better analogy, like a formula

6 in Excel or something. Right?

7 You put certain inputs in and numbers come

8 out the back end. Correct?

9 A Yes. Correct.

10 Q Are you familiar with all of the different

11 calculations that are involved?

12 A Yeah. I have gone through the

13 calculations. Yes.

14 Q Okay. Did you double-check -- at least

15 double-check the math on this one, so to say?

16 You checked every calculation in each one

17 of these tables to make sure that there was no

18 glitch in the system?

19 A Our calculations were pretty much fixed,

20 so you can't really change the calculations.

21 Q Okay. But you understand what each and

22 every calculation is?

23 A Yes.

24 Q So the sole driver of the use of Time

25 Period I was your 15 percent assumption?

1 A Correct.

2 Q Okay. And you never did an evaluation
3 using Time Period IV, which is actually the time
4 period in which the actual shares at issue here
5 were issued in Dr. Golberg's name. Correct?

6 A Not for February 14, 2019.

7 Q Okay. Why not?

8 A Because we determined it would take
9 53 quarters to liquidate those shares at the end
10 of the restriction period.

11 Q Okay. Are the restrictions on shares in
12 the MPI study the driver of the daily trading
13 volume information, or is that completely
14 independent?

15 A What do you mean? The 15 percent?

16 Q At the top of page 10, you do calculations
17 to determine how long it would take to sell
18 something. Correct?

19 A Correct.

20 Q A block of shares.

21 In the MPI study, what drives the amount
22 of time it would take -- do you do the same
23 assumption every time you apply the MPI model, the
24 15 percent?

25 A I'm not sure what you mean.

1 Q I may not be sure either, but you're the
2 expert.

3 The private placement model, the MPI
4 study -- you said it involves both public and
5 privately traded companies?

6 A The MPI study is only publicly traded
7 stocks.

8 Q The private placements are only of
9 publicly traded stocks?

10 A Correct.

11 Q Okay. Is the 15 percent of daily trade
12 volume assumption part of the MPI study?

13 A No.

14 Q It's not. So what does the MPI study do?

15 A The MPI study is -- what it does is, we
16 have to tell it what our time frame is, what our
17 lockup period is, and from that data, we can
18 determine the appropriate discount.

19 Q So what you do is, you use the MPI study,
20 which is, to some extent, empirical, and it tells
21 you that shares that were locked up under the
22 pre-1990 regime -- this is the impact on price.

23 Right?

24 A Correct.

25 Q Or, you know, the post-2008, this is the

1 impact on the stock. Right?

2 A Correct.

3 Q But the input for the analysis has nothing

4 to do with the MPI study. Right?

5 The input for the analysis is strictly the

6 15 percent assumption. Right?

7 A Correct.

8 Q And that's an across-the-board assumption

9 for every single publicly traded share that your

10 company's looked at for the last ten years?

11 A We use between 10 and 15 percent as a

12 general rule. Yes.

13 Q Okay. So as far as arriving at the

14 15 percent, that's strictly based on discussions

15 with traders' internal decision that's made at

16 your firm. Right?

17 A Correct.

18 Q Okay. What are the -- explain to me how

19 you deal, then, with the variables.

20 I now understand that the volatility --

21 well, explain to me this: If the MPI model deals

22 only with publicly traded shares, then why would

23 you ever use the 25th percentile as something --

24 in other words, why would you ever estimate

25 volatility in the MPI study if it deals only with

1 publicly traded shares?

2 Why wouldn't you always use the actual

3 volatility of the publicly traded stock?

4 A Because when we're using this study, we're

5 not -- typically not valuing publicly traded

6 shares. We're typically valuing privately traded

7 shares.

8 Q Okay.

9 A So at that point you do not have a

10 volatility number.

11 Q So the data set that you used to perform

12 the MPI study were private placements of publicly

13 traded shares?

14 A Correct.

15 Q But the application of the MPI study is

16 typically to determine the impact on large-volume

17 trades on nonpublicly traded shares?

18 A Or any trades on nonpublic shares.

19 Q But typically used to value nonpublicly

20 traded shares?

21 A Yes.

22 Q So why did you use it to value publicly

23 traded shares here?

24 A Because it's data generated from publicly

25 traded transactions. This is a publicly traded

1 stock, and we know how long it would -- we know
2 the period of time it would take to sell. We have
3 market evidence of what the discount would
4 potentially be.

5 Q Well, you have market discount based
6 on -- strike that.

7 You have market information about
8 discounts that occurred on nonpublicly traded
9 shares?

10 Wait a minute. Hold on. Strike all that.

11 Why would you use a model, that's used by
12 you almost exclusively, to try to determine the
13 impact of trading volume on nonpublicly traded
14 shares or the time period it would take to sell
15 nonpublicly traded shares without impacting price?

16 Well -- and I apologize. I'm trying to
17 learn this as I go. So strike all that.

18 Is the purpose of the MPI model to
19 determine how much you could sell without
20 impacting the market or what the market impact
21 would be of a certain percentage of sale?

22 A The MPI study -- let's back up.

23 So the bulk of our business is valuing
24 privately held companies. And so that's why we
25 have this particular model, because we have market

1 evidence that tells us what the market does
2 over -- when there's a certain restriction period
3 or a period when you can't sell the stock.

4 So if you're a private company and you
5 want to sell your stock, you can't just go down
6 and sell it. You have to go through a process to
7 do that.

8 Q Right.

9 A Part of it is dealing with brokers,
10 finding a buyer, and effectuating the sale.

11 The other part of it is, you've got to do
12 some other work upfront: make it ready, you
13 know, clean up the books, et cetera, et cetera.

14 So we use this study to say, Okay.
15 There's a time period between when you want to
16 sell and when you can actually sell, and this
17 model gives us public data of what the impact of
18 that time period is.

19 Q But the time period in -- you're trying to
20 figure out what the impact is of the delay in, you
21 know, truing up the books and preparing it for
22 sale. Is that what you're saying?

23 A I'm saying, from the day I want to sell
24 the business to the day I actually sell the
25 business, there's a time period.

1 Q Right.

2 A It's usually -- it could be a couple
3 years. So I'm saying, I need to -- if I want to
4 sell my stock today or if I'm valuing it as of
5 today, I know I can't sell it in the public market
6 today. It's going to take me time to sell this
7 company.

8 Q But it's not going to take you time to
9 sell it because of concerns that sale of any
10 volume or any percentage of the company will
11 effect the market price. Right?

12 There are practical considerations. There
13 are operational things that need to be done.

14 Is that right?

15 A In the case of a private company, that's
16 correct.

17 Q Okay. What is the Log Risk Fee Rate in
18 the table on the bottom of page 10?

19 What does that represent?

20 A Where are you?

21 Q Just below the Log Market Cap Time Period
22 entries, in that table at the bottom of page 10,
23 it says, in the variables, it's a "Log Risk Free
24 Rate."

25 A Oh.

1 Q What's a "log risk"?

2 A That's the risk-free rate of a 30-year
3 treasury -- U.S. treasury rate, which we assume is
4 a 30-year treasury.

5 Q Okay. Does that rate fluctuate over time?

6 A Yes.

7 Q Okay. And the one you used here was as of
8 February 14, 2019?

9 A We normalize that to 3 percent because, if
10 you look at rates right now, they're very low.

11 So at that time, in February of '19, the
12 rates were really low. So we basically normalize
13 it to 3 percent, which is basically the historical
14 long-term rate.

15 Q Well, okay. But why would you normalize
16 it and not use the actual rate?

17 A Because the rate, at the time, was
18 extremely low. And going forward, if you're
19 looking at going out 53 quarters, which is
20 13 years, that rate could change over time. So
21 it's going to revert back.

22 Q But has the rate been historically low
23 since in or about 2009?

24 A It's been low since '09, and it's slightly
25 lower today than 3 percent.

1 Q Okay.

2 A It's about 2.8 percent.

3 Q And just about every day we hear news
4 about the Federal Reserve, and that's what
5 typically drives this. Right?

6 It's understood that the Federal Reserve
7 is keeping that rate low. Correct?

8 MR. KAZAN: Object to the form.

9 THE WITNESS: In the short term, yes.

10 BY MR. ZIMMER:

11 Q Well, the short term, so far, has been
12 from 2009 to 2021. Right?

13 A That's correct. It's been ten years.

14 Q And it's been going down still. Right?

15 A It's actually gone up a bit.

16 Q Well, I'm saying, it's still at
17 historically low rates, in your perspective.

18 Correct?

19 A That's correct. Yes.

20 Q Okay. Any inside knowledge, that I could
21 use to finally retire, about what the fed is
22 going to do with interest rates over the next 10
23 to 53 quarters?

24 A You look like you have a long time to
25 retire. No. I wish I did because I'd retire.

1 Q Okay. So you really have -- so you're
2 using a rate -- a pre-2009 rate, because the rate
3 has been historically low for the last 12 years
4 and you have no information about whether it will
5 go up or not, but most of the news is that it's
6 unlikely that the fed is going to do anything to
7 precipitously raise rates in the short to medium
8 term. Correct?

9 That's what they say at every quarterly
10 meeting. Correct?

11 MR. KAZAN: Object to the form.

12 THE WITNESS: Again, that's the short
13 term. We're looking at the long-term rate
14 and the long term -- over the long term,
15 things tends to revert back to the mean,
16 which is 3 percent.

17 BY MR. ZIMMER:

18 Q Okay. But you didn't take into account
19 the lower rate; you just used what you consider
20 the historical rate of 3. Right?

21 You didn't adjust it for the 12 years it's
22 already been at about 1 percent. It was at 0 at
23 one point, wasn't it?

24 A I don't know if it was quite that low, but
25 it was --

1 Q It was close to zero.

2 A -- it was close. In that range.

3 Q You didn't account for that as part of

4 history?

5 A No.

6 Q The 12-year recent history isn't part of

7 the historical rates that you used to come up with

8 the 3 percent. Right?

9 A No. We assume that it reverts to the

10 mean.

11 Q Would a higher or lower percentage affect

12 the outcome of the model?

13 A A lower rate would make the discount

14 higher.

15 Q Okay. Now, the next thing is S&P 500:

16 12-month change.

17 Is that just what it looks like? Is that

18 the -- well, just me tell me what it is.

19 A That's the actual change in the S&P 500 as

20 of February 14.

21 Q The 12-month period -- what makes you use

22 a 12-month period there? Do you know?

23 A That's what our model looks at. So, in

24 our model, we look at what date a stock price -- a

25 stock transaction occurred on a restricted stock

1 and look at the 12-month change at that point.

2 Q Okay. But you're using Time Period I,
3 which is, at minimum, a three-year holding period.

4 Right?

5 A Yes.

6 Q And you're looking at the 53-quarter
7 assumption. Right?

8 A Yes.

9 Q So why use only a 12-month S&P rate
10 change?

11 A Because that's what we calculate in our
12 model. Like I said, we look at certain
13 attributes, and we look at, at that time when a
14 transaction occurred, what was the 12-month change
15 in the S&P market.

16 Q So that's just something that's -- it's
17 done that way because it's done that way? You
18 can't explain why?

19 Does it ever change -- strike that.

20 Does it ever -- does the -- well, let me
21 take a step back.

22 Does the risk-free rate -- has that ever
23 changed while you've been at MPI? The assumption
24 that you used for that, the 3 percent?

25 MR. KAZAN: Object to the form.

1 THE WITNESS: No.

2 BY MR. ZIMMER:

3 Q To the best of your knowledge --

4 A We've always normalized at the 3 percent.

5 Q And the S&P, have you ever used anything
6 other than a 12-month period?

7 A No.

8 Q Okay.

9 A That's the way the model calculates it.

10 Q Well, I understand that's what's used.
11 How was it determined to use a 12-month
12 rate?

13 A A 12-month period.

14 Q The 12-month period.

15 A That was determined when they did the
16 model.

17 Q Okay. And did you help create this model?

18 A No.

19 Q Okay. Is this model ever reevaluated
20 internally, or is it just simply applied?

21 A We update it from time to time. I don't
22 recall when it was last updated.

23 Q Okay. Do you recall what was updated?

24 A Usually just the underlying data. The
25 methodology hasn't changed.

1 Q Okay. And what about these assumptions?

2 A What do you mean? Using a one year

3 versus --

4 Q One year --

5 A Yes. That does not change.

6 Q -- and the three? Okay.

7 Now, Price to Book Dummy I, Price to Book

8 Dummy II, what does that refer to?

9 A It looks at the value of the company

10 versus the book value of the stock. So we assume

11 it's 1 for most companies, especially nonoperating

12 companies.

13 Q Well, you assume it's 1?

14 A Typically, yes.

15 Q Now, what does Coefficients mean in the

16 header here?

17 A Coefficients is just the statistical

18 calculation based on the log, which is the --

19 there's three columns: Base Value, and then you

20 basically turn that into a log and then calculate

21 the coefficient of the log.

22 Q Okay. Why would -- you're saying that

23 this is intended to reflect the actual value.

24 What value? Book value? Market value?

25 You said it was intended to reflect the --

1 is it a ratio of the book value to the market

2 price?

3 A No. What this model does is, it predicts

4 the price of a private placement transaction.

5 Q I'm not -- I appreciate that. I'm asking

6 you about the model. I'm asking about this line

7 or these -- this set of lines: Price to Book

8 Dummy I, Price to Book Dummy II.

9 I assume those are separate from log

10 closing price. Is that correct? That these two

11 represent the same variable log to book?

12 A Yes.

13 Q And is that intended to represent the

14 actual value versus the market cap, for lack of a

15 better expression? Is that what you said?

16 A Yes. Basically, yes.

17 Q Okay. So, first of all, what versus

18 market cap? Is it book value? Is it --

19 A It's book value.

20 Q -- market value? Is it a valuation

21 number?

22 A Well, market cap is market value of the

23 whole stock.

24 Q Right. In other words, you don't go in

25 and kick the tires and do an actual valuation of

NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.
William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

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1 all assets and such, do you, for that?

2 A No.

3 Q Okay. And you don't do -- you don't know

4 the actual book value, do you?

5 Well, let me put it this way: For a

6 publicly traded company like Navidea that

7 publishes financial statements, reviewed on a

8 quarterly basis, and audited on an annual basis,

9 could you determine the book value?

10 A Yes.

11 Q Okay. Did you?

12 A I do recall looking at it. I don't

13 remember what the results were.

14 Q Okay. Does your -- did you compare the

15 book value to the market cap to determine the

16 actual value? To determine this variable, I

17 should say.

18 A No.

19 Q You just assumed 1?

20 A Assumed 1, yes.

21 Q Okay. And did you take into account that

22 there are a large percentage of the Navidea shares

23 are not registered shares?

24 In other words, the market cap doesn't

25 capture the entire ownership of the company.

1 Did you take that into account?

2 MR. KAZAN: Object to the form.

3 THE WITNESS: No.

4 BY MR. ZIMMER:

5 Q But that would be correct. Right?

6 In a company where there are a lot of
7 nonregistered shares that have been sold, that the
8 market cap wouldn't be a reasonable reflection of
9 the total value of the company. Right?

10 Because everyone knows that there are
11 these other percentages of the company held by
12 other people that aren't reflected in the market
13 cap. Correct?

14 MR. KAZAN: Object to the form.

15 THE WITNESS: The market cap is just
16 the value of the shares traded on the
17 exchange.

18 MR. ZIMMER: Right.

19 BY MR. ZIMMER:

20 Q So if that is less than 100 percent, then
21 that does not relate to the actual total value of
22 the company. Right?

23 MR. KAZAN: Objection to the form.

24 THE WITNESS: Correct.

25 MR. ZIMMER: Okay.

1 BY MR. ZIMMER:

2 Q But you just used the 1 assumption. You
3 didn't do anything to determine the percentage of
4 outstanding stock that is not publicly traded?

5 A No, we did not.

6 Q Okay. And you didn't use the publicly
7 disclosed financial statements to determine the
8 actual value?

9 A Correct.

10 Q And you didn't, obviously, compare that
11 to even the market cap. Right? You just used
12 the 1?

13 A Correct. Yes.

14 Q Okay. Log Closing Price, what does that
15 mean, the next one?

16 A The average price of our study was \$7.50,
17 so that's our target: 7.50. So we'd compare our
18 results to the 7.50 number.

19 Q So the 7.50 represents the average price
20 of the publicly traded shares that were the
21 subject of the private placements that were
22 considered in the MPI study?

23 A Yes.

24 Q Okay. And, again, you have no idea what
25 kind of companies were involved. Correct?

1 A Correct.

2 Q If they had any relation to Navidea's
3 financial situation or market situation. Right?

4 A Correct.

5 Q Okay. So why do you use -- how is that
6 number used?

7 A So, basically, we come down -- if you look
8 at the bottom, it says, "Predicted Price."

9 Q Right.

10 A We compared the predicted price to the
11 7.50, and the difference is the discount.

12 Q But how do you get the predicted price?
13 Is that the output of the model?

14 A Correct. Yes, it is.

15 Q And is the 7.50 one of the inputs into the
16 model?

17 A Yes, it is.

18 Q So how does the 7.50 contribute to the
19 predicted price?

20 A It's part of the calculation.

21 Q Do you know how that specific line
22 contributes to the predicted price?

23 A It's all -- basically, it's -- all these
24 factors go into the predicted price.

25 Q But do you know how to trace that

1 through -- what the impact of the predicted
2 price -- I'm sorry, what the log closing price is
3 on the predicted price, or is that just the inner
4 workings of the model?

5 A It's just the inner workings of the model.

6 Q And you're not familiar with how that
7 thread traces through the application of the
8 model --

9 A No.

10 Q -- to come out to the final number?

11 A Not specifically.

12 Q Okay. Are you generally aware?

13 A I mean, generally, it's just a
14 calculation. So you basically sum up all these
15 components to get to your coefficient, which turns
16 into a price. It's a whole calculation. It's
17 rather complicated.

18 Q So the calculation isn't reflected here?

19 These are just the inputs. Right?

20 Like, if I totaled up this column, I
21 wouldn't come out with anything reflective of the
22 conclusions. Right?

23 You're just listing --

24 A Actually, if you total up the log column
25 and the coefficient column, you should come up

1 with 1.4289.

2 Q Okay. Well, "Sumproduct of Coefficients

3 and Inputs." Okay. That makes sense.

4 Log -- the next line is Log -- well,

5 actually, under Log Closing Price there is a

6 second line of 12.

7 A That's actually part of Quarters to Sell,

8 so you can look at it as 12 quarters, 50 quarters,

9 or 100 quarters.

10 Q Oh, I see. So that doesn't -- that's

11 encompassed in Log Quarters to Sell Under the

12 1 Percent Limit Rule?

13 A Yes.

14 Q Even though it's a line above that?

15 A Yes.

16 Q Okay. So what does that speak to? What

17 is that all about?

18 A So that's the model. The model can

19 determine the discount based on the quarters to

20 sell.

21 So in this particular case, we use

22 50 quarters because, up at the top of page 10, we

23 came up with 53 quarters to sell.

24 Q Right.

25 A So we used -- in this model, we used -- we

1 rounded to 50 quarters.

2 Q Okay.

3 A And that goes into the calculation.

4 Q Okay. But this says, "Log Quarters to

5 Sell Under the 1 Percent Limit Rule."

6 What's the "1 percent limit rule"?

7 A That is part of Rule 144. So in the

8 model -- if you look at the model, there's -- it

9 calculates it based on what the impact on the

10 restricted stock studies during the model would

11 be.

12 Q And what is the 1 percent restriction

13 under Rule 144?

14 A There's a limit to 1 percent of the

15 trading volume over a period of time.

16 Q But what's the limit? What does it limit?

17 A It limits the amount of shares you can

18 sell.

19 Q Who can sell?

20 A That any holder can sell.

21 Q Well, any holder can only sell 1 percent?

22 A Under Rule 144. So if you're subject to

23 144, you're subject to --

24 Q What do you mean by "subject to Rule 144"?

25 A Again, under Rule 144, there are certain

1 limitations on selling shares.

2 Q Okay. But what limitations lead to a

3 1 percent limit rule?

4 A There's volume limitations you can sell

5 under 144.

6 Q But volume limitations on who?

7 A Anyone who is subject to Rule 144.

8 Q Well, I understand. But would Dr. Golberg

9 be subject to 144 such that he could only sell

10 1 percent of his stock?

11 A I have no opinion on whether he was

12 subject to 144 or not.

13 Q So if you have no opinion on whether he

14 was subject to it, why would you use the 1 percent

15 limit rule in the model?

16 A That's the way our model calculates it.

17 Q And up top, you assume that he could sell

18 15 percent of the daily trading volume. Right?

19 A Yes.

20 Q The 1 percent rule, is that 1 percent per

21 day?

22 A No.

23 Q What is it? 1 percent per what? What

24 does it mean? What is it 1 percent of?

25 A There's a formula. I can't recall the

1 exact calculation. I'm not an expert on 144, but
2 there is a limitation. I don't recall what it
3 was.

4 Q Okay. Did you consult with an expert on
5 144 in this engagement?

6 A No.

7 Q Okay. So you don't know what the
8 1 percent limit rule is?

9 A I don't know exactly what it is.

10 Q Okay. But you used a methodology that
11 applies a 1 percent limit rule. Right?

12 A Our model does that, yes.

13 Q Okay. But up above, you assume that
14 15 percent of the daily trading volume could have
15 been sold without affecting market price?

16 A Correct.

17 Q Do you know how the 15 percent assumption
18 relates to the 1 percent limit rule?

19 A No.

20 Q Okay. So you don't know if the model
21 assumes you could only sell 1 percent per day of
22 the trading volume?

23 A It's not per day. I don't know it is.

24 Q Is it per 15 days?

25 A Again, I don't recall the exact trading

1 formula.

2 Q So you really have no idea how the
3 1 percent rule relates to the 15 percent
4 assumption that you used as an input into this?

5 A No.

6 Q Okay. "Registration Status. Use the Time
7 Period I Dummy variable to reflect the longer
8 holding period due to size of block."

9 So what does that mean?

10 A Where are you?

11 Q Well, maybe they are two different things.

12 So Registration Status -- I'm sorry.

13 So the next thing under Log Quarters to
14 Sell Under the 1 Percent Limit Rule, there's a
15 line there for Registration Status.

16 A Oh, okay. We use 1 because it was
17 unregistered shares.

18 Q What other options are there?

19 A There's either registered shares or
20 unregistered shares.

21 Q What would the input be if there were
22 unregistered shares?

23 A If they're unregistered, it's a 1.

24 Q What about if they're registered?

25 A I would be a 0.

1 Q And do you know why that is?

2 A Why do we have a 0 or 1?

3 Q Why would you use a 0 for registered and a

4 1 for unregistered? Do you know why?

5 A Well, most of the shares we deal with are

6 unregistered. I understand these shares are

7 unregistered.

8 Q But do you know why you would use a 1 for

9 unregistered, other than that's what it says on

10 the, you know --

11 A Well, in our model, there's -- when you

12 have restricted shares, they can be either

13 registered or unregistered.

14 Q Right.

15 A So we are looking at shares that are

16 unregistered.

17 Q I understand that. But what is the

18 significance of the value 1?

19 A Because we are valuing unregistered

20 shares.

21 Q And if they were registered, you would use

22 a 0?

23 A Correct.

24 Q I mean, I'm not a math major or an

25 accountant, but I know there's a big difference

1 when you multiply something by 1 or 0, and those
2 are actually answers I could give because 1 stays
3 the same and 0 is 0.

4 A Sure.

5 Q So how does the variable 1 trace through
6 the calculations done by the model?

7 A What do you mean? So if it's a 1, it
8 adds -- it adds that -- whatever those two
9 variables are to the price.

10 Q Which two variables?

11 A So registration, if it's 1, it calculates
12 a field in coefficient, and it's 0, it does not.

13 Q Okay.

14 A So, basically, if you had registered
15 shares, it would give you a lower discount.

16 Q So you think that this is a constant?
17 This variable is a constant? Registration status
18 is a constant in your model?

19 A Well, in the model, you can have
20 registered shares or unregistered shares.

21 Q For unregistered shares, it stays the
22 same?

23 A Yes.

24 Q Do you know what that contributes to the
25 calculation?

1 A You'd have to add it up. I don't know.

2 Q No, no. I mean, do you know what the
3 reason is for using this data set as part of the
4 overall calculation?

5 A You mean in the model?

6 Q Yeah.

7 A Yes, because there's differences between
8 registered and unregistered shares --

9 Q Right.

10 A -- in the discounts.

11 Q And, again, so unregistered shares,
12 regardless of any of the individual
13 characteristics of the underlying company, the
14 same 1 would be used?

15 A Yes.

16 Q And the 1 increases the discount, the
17 reduction, versus market value that you're opining
18 on. Correct?

19 A Correct.

20 Q So you give the same reduction based on
21 this input to every single unregistered share,
22 regardless of who holds it or what company it
23 relates to, what sector the company's in, the
24 company's financial condition, the company's
25 trading history, et cetera?

1 A Yes.

2 Q Okay. So then Time Period I Dummy, in the
3 Comments, it says, "Use the Time Period I dummy
4 variable to reflect the longer holding period due
5 to size of block."

6 What does that refer to?

7 A That ties to -- because we used Time
8 Period I above, we used the Time Period I Dummy
9 below.

10 Q Okay. But this says due to "size of
11 block." What does that mean, "size of block"?

12 A That refers back to the top of page 10
13 where we calculate the big block and how long it
14 would take to . . .

15 Q So "size of block" relates to the absolute
16 number of shares, or the number of shares relevant
17 to the daily trading volume?

18 A The number of both. Actually, the number
19 of shares -- it's the size of the block and how
20 long it would take to get -- basically, Time
21 Period I Dummy here equates to -- if we look at
22 Log Market Cap Time Period I, it's the same thing.

23 So if you use Time Period I at the top of
24 this -- if you look at this table, if you use Time
25 Period I at the top, you have to use Time Period I

1 down in the dummy section.

2 Q Got it. And then Intercept, that's the
3 last input, it says, "Assumed to be 1. (We have
4 not forced the regression through the origin, but
5 rather used the intercept as a given)."

6 What does that mean?

7 A That's just where -- if you're doing a
8 regression, you look at where it intersects the
9 axis, and that's just basically what this is.

10 So it's about --

11 Q But it says, "Assumed to be 1."

12 A Yes.

13 Q Why do you -- isn't that usually
14 observational in nature, where the intersect is?

15 A In our model, we assume it's 1.

16 Q You don't actually observe where the
17 intersect actually is?

18 A No, we don't.

19 Q Why not?

20 A It's the way we run our model. So we just
21 assume.

22 Q But do you know why it's done that way?

23 A No. I don't know.

24 Q Did you ask anyone?

25 A No.

1 Q Is it fair to say that, for all of these
2 inputs, you didn't make any inquiry before you
3 used it in this engagement, you know, Why do we do
4 it this way? Why do we do it that way? Why do we
5 do it this way?

6 This is the model, and you just simply
7 applied the model?

8 A I mean, I know why we do most of it. I
9 know why we picked volatility. I know why we
10 picked time frame. Those are the two biggest
11 drivers.

12 Q And the time frame is driven by the
13 15 percent assumption?

14 A Correct.

15 Q It's driven solely by that. Right?

16 You simply apply that to the daily trading
17 volume. Right?

18 A Correct.

19 Q Okay. Have you ever asked anyone inside
20 the firm why none of these things are
21 individualized to specific public stocks when you
22 have the actual numbers?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: No.

25

1 BY MR. ZIMMER:

2 Q Have you ever asked them why they stick
3 with the 3 percent treasury yield?

4 A Because that represents a long-term rate
5 and we normalize it.

6 Q Okay. Just so I'm clear -- I think I
7 probably asked this.

8 The S&P 500 12-month change that was for
9 Navidea -- that was Navidea specific. That was an
10 actual observation on the trading history of
11 Navidea, or not?

12 A No. That's the actual S&P 500.

13 Q Oh, I apologize. That's the index?

14 A Yes.

15 Q Okay. Sorry about that.

16 Okay. And I just want to summarize a few
17 things.

18 So you're not aware of what types of
19 companies are in the sample size for the MPI
20 study?

21 A I'm not.

22 Q Okay. Are you aware of -- generally, of
23 what the trading volume was of the companies
24 incorporated into the MPI study?

25 A No.

1 Q And, again, I think I asked this.

2 Are you aware of what specific
3 restrictions existed in the private placements
4 that are the subject of the MPI study?

5 A For stocks individually?

6 Q Yes.

7 A They were subject to whatever the 144 rule
8 was at the time.

9 Q Do you know if there were any other
10 restrictions on the stock?

11 A Not that I'm aware of.

12 Q Do you know whether there were?

13 MR. KAZAN: Object to the form.

14 THE WITNESS: I think -- I don't
15 believe there were, actually.

16 BY MR. ZIMMER:

17 Q You don't believe there were?

18 A No.

19 Q What's that based on?

20 A Because when they do the stocks, they
21 pretty much vet them. They're looking for stuff
22 that's strictly 144 so that you can put it into
23 the proper buckets.

24 Q Okay. So private placements, they're
25 private transactions outside the public market.

1 Right?

2 A Correct.

3 Q Are they typically -- well, do you know
4 whether the private placements in your -- strike
5 that.

6 Do you know whether the private placements
7 that were the subject of the MPI study were all
8 arm's length transactions?

9 A Yes.

10 Q How do you know that?

11 A Because we vet the transactions to make
12 sure they are arm's length transactions.

13 Q Okay. And those are individual
14 purchasers and individual sellers negotiating the
15 price.

16 Correct?

17 A Correct.

18 Q Did you do anything to determine whether
19 the companies involved had issues that might
20 affect the price the company was able to negotiate
21 for the shares?

22 A I don't know the answer to that.

23 Q Okay. Well, you don't know whether it was
24 done, or you don't know whether they existed
25 because it wasn't done?

1 Sorry. I believe my question was -- and

2 I'll say it again, just in case I didn't say what

3 I meant to say.

4 Do you know whether the specific

5 circumstances of the companies that were the

6 subject of the private placement in the MPI study

7 were considered to determine whether those

8 company-specific issues could have affected the

9 price of the private placement sale?

10 A I don't know the answer to that.

11 Q Okay. You don't know whether that was

12 done or not at the time the study was done?

13 A I don't know the answer. No.

14 Q And have you read the literature around --

15 or whatever there is to describe the creation of

16 the MPI study --

17 A Yes.

18 Q -- by your firm?

19 A Yes.

20 Q Would that be something that would be

21 mentioned in there?

22 A Yes, it is.

23 Q And so it wasn't done, or you don't

24 remember whether it was?

25 A I don't recall. I read it a long time

1 ago. I don't recall.

2 Q Okay. You didn't brush up on it for this
3 engagement?

4 A No.

5 Q Okay. Let's see. Do you know whether the
6 sellers and purchasers were interviewed to
7 determine whether deal-specific issues impacted
8 the price of the private placements that are part
9 of the MPI study?

10 A I don't believe they were.

11 Q Okay. So it's possible that something
12 like the seller needing cash right away, or things
13 like that, could have affected the transaction
14 price. Correct?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Possibly. I can't
17 speculate.

18 BY MR. ZIMMER:

19 Q And if those same conditions didn't occur,
20 would it be an appropriate comparison?

21 A Again, I can't speculate on that.

22 Q Okay. You can't speculate whether
23 specific factors in a transaction that drove the
24 price down would be appropriate to apply to a
25 transaction where that wasn't present?

1 A Again, I can't -- I don't know the answer
2 to that.

3 Q Okay. Do you know how many private
4 placements were in the sample size for the MPI
5 study?

6 MR. KAZAN: Object to the form.

7 Asked and answered.

8 THE WITNESS: You asked me that
9 earlier. I said I didn't know the
10 answer.

11 BY MR. ZIMMER:

12 Q Any order of magnitude?

13 A There was a couple thousand, but I don't
14 remember the exact number.

15 Q Okay. Why wouldn't you compare the
16 trading histories of, you know, like low volume,
17 closely held, publicly traded shares rather than
18 private placements since that's what you seem to
19 want to do, is try to determine the public
20 value -- you know, trading value of a stock?

21 Why would you apply this model versus one
22 that's geared more toward the circumstances you're
23 presented with?

24 A We've always used this model as our gauge
25 for market data, so I'm not sure if there's other

1 models out there.

2 Q You don't know if there's other models out
3 there?

4 A No.

5 Q Did you do any research to see if there
6 were any models that worked up actual thinly
7 traded public shares?

8 A I know there's models out there that are
9 proprietary. I know there's another person who
10 does that sort of thing.

11 Q Okay. Did your firm consider developing a
12 model for this engagement that would be based on
13 thinly traded public shares versus private
14 placements?

15 A No.

16 Q Why not?

17 A Because we used this model. This model
18 tends to work fairly well for us.

19 Q Well, when you say it "works fairly
20 well" --

21 A We've used it for --

22 Q -- what does that mean?

23 Like, you've been able to charge money for
24 it for ten years?

25 MR. KAZAN: Object to the form.

1 MR. ZIMMER: Let the record reflect
2 that that was said in jest.

3 MR. KAZAN: Understood, Mr. Zimmer,
4 but can you just repeat the question that
5 you want answered at this point?

6 MR. ZIMMER: Can read that back for
7 me?

8 THE COURT REPORTER: Sure.

9 (The last question was read
10 back by the court reporter.)

11 BY MR. ZIMMER:

12 Q Okay. So define "works fairly well."

13 A So I guess I misspoke. I shouldn't say it
14 "works fairly well." We've used it a long time.

15 It's a good representation of market data based on
16 lack of liquidity or time to liquidate shares.

17 That's why we use it.

18 Q But it's not based on public markets?

19 A It is based on public -- it's based on
20 publicly traded stocks.

21 Q But it's not based on public trades of
22 stock. It's based on private placements of
23 publicly traded stock. Right?

24 A Correct. Yes.

25 Q Okay. And it's not necessarily based on

1 thinly traded companies. Right?

2 A There are some that are thinly traded and
3 some that aren't.

4 Q Okay. So do you think that the thinly
5 traded nature of a stock would be relevant?

6 A It could be.

7 Q You don't know?

8 A I don't know.

9 Q Okay. So you don't know whether including
10 other types in there would skew or somehow render
11 it less representative?

12 A I don't know the answer to that.

13 Q Okay. I may have asked this, and I
14 apologize.

15 Do you know whether the companies in the
16 MPI study were thinly traded -- you said there
17 were some that were thinly traded and some that
18 weren't?

19 A Yes.

20 Q Did you even consider using any
21 methodology, other than this one, to address the
22 question of whether the market price should be
23 discounted in an analysis of the value of the
24 shares at issue here?

25 A The other analysis we looked at was we

1 looked at private placements of large blocks of
2 stock.

3 Q How does that vary from what's in the MPI
4 study?

5 A The MPI study is looking at private
6 placement of restricted stock, whereas I can look
7 at stocks that were traded not through the market
8 but through private networks.

9 So there's basically two trading
10 platforms: You've got the public market, the
11 New York Stock Exchange, and there's also a
12 network of trades through institutional trades.

13 Q Right.

14 A So if you look at institutional trades,
15 that's usually where your big blocks trade.

16 Q Right.

17 A And you can see, from that data, what
18 discounts were for large blocks of stock.

19 Q Did you apply that model here?

20 A No.

21 Q Okay. So those are two existing models.

22 Did you consider that the existing models
23 might not be appropriate to use here?

24 A No.

25 Q You never considered the possibility?

1 A No.

2 Q Okay.

3 MR. ZIMMER: Why don't we take five
4 minutes. Let me organize. I went a
5 little bit out of order, got ahead of
6 myself a little bit.

7 MR. KAZAN: Sure.

8 (A recess was held off the record.)

9 MR. ZIMMER: Back on the record.

10 BY MR. ZIMMER:

11 Q In arriving at an output from your -- from
12 the MPI study methodology, is there one variable
13 that has the largest impact on the outcome?

14 A There's two variables that have the
15 largest impact: one is volatility, and one is
16 time -- time period.

17 Q But the time period is based on the
18 15 percent assumption. Correct?

19 A Correct.

20 Q And the volatility is based on the
21 actual -- in this case, the actual volatility of
22 Navidea shares?

23 A Correct.

24 Q Okay. But do you know which of those two
25 has the greatest impact?

1 A No.

2 Q Why not?

3 A We could calculate it and see. I don't
4 recall, off the top of my head. You'd have to do
5 the calculation and see which one gives you the
6 biggest, but . . .

7 Q Okay. But one of the two most important
8 factors is this longstanding 15 percent
9 assumption?

10 A The time frame, yes.

11 Q To be clear, on page -- you know, the
12 assumption on page -- I believe it was 10 --
13 right? -- of 15 percent of the daily trading
14 volume could be added. Correct?

15 A Correct. Yes.

16 Q Okay. It seems like a pretty detailed
17 methodology.

18 Do you know who actually developed it?

19 A It was developed with a number of the
20 people in our firm.

21 Q Were you at the firm at the time?

22 A No.

23 Q Okay. Do you know if the people are still
24 at the firm that did it?

25 A I think most of them are.

1 Q Okay. And you said, to the best of your
2 knowledge, it hasn't been updated in some time.

3 Has it ever been updated?

4 MR. KAZAN: Object to the form.

5 THE WITNESS: The data is updated
6 from time to time. The methodology stays
7 pretty much the same.

8 BY MR. ZIMMER:

9 Q The methodology is the same; the inputs
10 are updated. But, for example, the treasury --
11 some of them -- when you say "updated," you know,
12 they reflect reality. Right?

13 So, like, the S&P 12-month change, is it
14 always 12 months? You always use 12 months, you
15 said?

16 A We've always used 12 months.

17 Q Even when you're looking at a 53-month
18 period of -- 53-quarter period of selling, you're
19 still going to look at a 12-month period?

20 A Correct.

21 Q And although it's probably technically a
22 variable, the risk-free rate has remained the same
23 throughout. Correct?

24 A Yes. Well, since the rates fell to
25 unusually low rates, we've normalized it to

1 3 percent.

2 Q Do you know what you did before that?

3 A We used the actual.

4 Q You used the actual until the rate went

5 down?

6 A Correct.

7 Q Okay. Do you consider the MPI model to be

8 generally accepted?

9 A Yes.

10 Q How do you define that?

11 A We use this in hundreds of valuations each

12 year that go to the IRS, and they've been through

13 it before.

14 Q Okay. Has it been used in court before?

15 A Yes.

16 Q How many times?

17 A I don't know.

18 Q Have you used it in court before?

19 A Yes.

20 Q How many times?

21 A Probably three or four.

22 Q Okay. What were the circumstances in

23 those cases?

24 A One was a -- actually, we can look at my

25 history, and I'll tell you exactly what it was.

1 Q Yes. As I said, just to be clear, the
2 last two pages of the addenda are not contained in
3 this exhibit, but your testimony is complete in
4 here. So we can refer to that, if you want.

5 A So that was used in Lobsenz versus
6 Lobsenz, which is at the bottom of my trial
7 history.

8 Q Okay. And what were the circumstances
9 there?

10 A That was a family dissolution matter, and
11 the issue was a -- there was an asset we were
12 valuing, and we were determining lack of
13 marketability for that asset.

14 Q What was the asset?

15 A It was an interest in a family limited
16 partnership.

17 Q Publicly traded?

18 A No.

19 Q Okay. What else?

20 A That's the only one I've used in court.

21 Q Okay. Again, that didn't involve publicly
22 traded securities?

23 A Correct. I've used it in cases that have
24 settled, but the ones that have gone to trial --

25 Q Right. Understood.

1 Okay. Did you say earlier that it had

2 been peer reviewed?

3 A That's my understanding.

4 Q Do you know how? when? where?

5 A No, I do not.

6 Q What's your understanding based on?

7 A My understanding is it was published in an

8 article, and I assumed it was peer reviewed.

9 Q You assumed?

10 A Yes, sir.

11 Q Is "publication" equal to "peer review"?

12 A No.

13 Q Are you familiar with the publication?

14 It's listed in here. It's Business

15 Valuation --

16 A Business Valuation Review: Spring of

17 2011. It's on the bottom of page 8.

18 Q Oh, page 8. I see the footnote. Sorry.

19 A It wasn't my publication.

20 Q When you say it wasn't your publication,

21 do you mean you weren't involved in having it

22 published, or you weren't the publisher of the

23 periodical?

24 A Neither.

25 Q Okay.

1 A I have published in Business Valuation

2 Review, but I was not --

3 Q Is Business Valuation Review -- what type

4 of a publication is that? Do you know who

5 publishes it?

6 A Yeah. There's an industry group that

7 publishes the Business Valuation Review. I don't

8 remember the name of them, and they publish a lot

9 of articles. They published one of my articles.

10 Q Was your article peer reviewed that was

11 published?

12 A Yes.

13 Q What was that on?

14 A That was on using restricted stock studies

15 to determine lack of marketability.

16 Q Of what?

17 A For privately held companies.

18 Q Okay. For privately held companies?

19 A Yes.

20 Q But you don't know whether this -- do you

21 know whether Business Valuation Review conducts or

22 requires a peer review prior to publication?

23 A My understanding is they do.

24 Q Okay. This says it was published in

25 spring 2011.

1 Is that at or about the time it was
2 developed, do you believe, or was it developed
3 earlier than that?

4 A My understanding is it was developed a lot
5 earlier than that.

6 Q Okay. Do you know whether this
7 publication involved the use of this model to
8 determine the impact of trading volume of publicly
9 traded stocks on the public stock price?

10 A I do not.

11 Q Okay. Do you think it's likely that's
12 what it was about?

13 MR. KAZAN: Object to the form.

14 THE WITNESS: What? The publication?

15 MR. ZIMMER: Yeah.

16 THE WITNESS: The publication was
17 about a restricted stock study and the
18 methodology they used to do it.

19 BY MR. ZIMMER:

20 Q You believe -- finish. I'm sorry.

21 A That's it.

22 Q You believe it was about the methodology
23 itself, not applications of the methodology, the
24 different circumstances?

25 A Not that I recall. I don't recall -- I

1 read the article a long time ago. I don't

2 remember.

3 Q Okay. Do you know if anyone else at your

4 firm has used this in court to address the impact

5 of trading volume on publicly traded share price?

6 A In court? No, I don't.

7 Q Do you know if it's been peer reviewed for

8 that purpose?

9 A I don't know.

10 Q Do you know if it's ever been published

11 for that purpose?

12 A Not that I'm aware of.

13 Q Okay. So even if you were to assume that

14 the methodology had been peer reviewed, is it

15 generally accepted practice to use a methodology

16 designed for one purpose: to predict outcomes

17 in different situations?

18 MR. KAZAN: Object to the form.

19 THE WITNESS: I don't think that's

20 what we were doing here. We were looking

21 at a discount that's created for a time

22 period that it would take to liquidate a

23 piece of stock. That's what this model

24 does.

25

1 BY MR. ZIMMER:

2 Q But in your application of it to publicly
3 traded stock, one of the two key inputs is the
4 percentage of daily trading volume that could be
5 sold without affecting share price.

6 Right?

7 A That's an input into the model, yes.

8 Q And it's one of two principal inputs that
9 impact the outcome. Correct?

10 A That's correct.

11 Q And that is not part of the methodology.

12 Right?

13 A Well, the methodology just takes the -- a
14 group of data over a thousand transactions and
15 summarizes that data such that you can get a
16 result based on your circumstances.

17 Q But what I'm saying is, this says you
18 believe -- you say that you believe that studies
19 published in Business Valuation Review are peer
20 reviewed.

21 This says that, in 2011, "Regression
22 Analysis and Discounts for Lack of Marketability"
23 was published.

24 Is that the underlying private placement
25 methodology that we've been looking at at the

1 bottom of page 10?

2 A Yes.

3 Q Does that incorporate the 15 percent

4 assumption at the top of page 10, or is that

5 what's applied to that assumption?

6 A We apply the 15 percent to create an input

7 for the model.

8 Q Right. Do you believe that what was

9 published in Business Valuation Review included

10 the 15 percent assumption?

11 A No.

12 Q Okay. Is it generally accepted to use a

13 predictive model if the outcome of application of

14 the model incorrectly predicts true events?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I'm not sure what you

17 mean.

18 BY MR. ZIMMER:

19 Q If you had a model that was used to

20 predict average temperature variant, let's say,

21 per month -- okay? -- and somehow that model would

22 predict that, in the state of Connecticut, it

23 would be warmer in the month of January than in

24 the month of August, would it be generally

25 accepted to use that methodology?

1 MR. KAZAN: Object to the form.

2 BY MR. ZIMMER:

3 Q If you knew that the outcome was wrong?

4 MR. KAZAN: Object to the form.

5 THE WITNESS: If you were using a
6 predictive model as of a point in time, so
7 it's known or knowable as of, in this
8 case, February 14, 2019, so there's no way
9 I would know, at February 14, 2019, what
10 the actual numbers would be going forward.

11 BY MR. ZIMMER:

12 Q If you apply your model, is there ever a
13 circumstance in which it would predict that sale
14 of large volumes of shares would not cause the
15 market price of the shares to go down?

16 A Again, that's not what our model does,
17 so . . .

18 Q Well, you assume -- right? -- the
19 15 percent will -- that more than 15 percent will
20 drive the market price down if more than
21 15 percent of the average daily trading volume is
22 sold on a given day. Correct?

23 A That's correct. Yes.

24 Q If it turns out that the opposite is true,
25 would that be a valid predictive model?

1 A Again, the 15 percent is a rule of thumb
2 that can be applied to a large population, so it
3 could be possible that it's wrong. It could be
4 possible that you could sell shares and there's no
5 impact, or you could sell five shares and there is
6 a big impact.

7 Q If you knew that it was not effective in
8 predicting outcomes, would it be appropriate to
9 use it with respect to a specific stock?

10 MR. KAZAN: Object to the form.

11 THE WITNESS: Again, you're using a
12 broad market assumption to determine
13 future events. There's no way you'd know
14 future events at that particular time.

15 BY MR. ZIMMER:

16 Q Well, could one use this model -- well,
17 could one -- strike that.

18 Could one attempt to confirm the accuracy
19 of this model with respect to a specific stock by
20 applying it to a different date in time?

21 You apply to it to two specific dates.

22 Correct?

23 A Correct. Yes.

24 Q And theoretically -- not theoretically.

25 If asked, you could apply it to any date

1 in time. Correct?

2 A True.

3 Q You'd use the same 15 percent assumption:

4 the assumption that the sale of more than

5 15 percent of the total daily trading volume --

6 the average daily trading volume would affect --

7 cause a downward pressure on the price?

8 A That's correct. Yes.

9 Q So if you observed, say, a dozen instances

10 where trading volume was somewhere in the order of

11 10 to 80 times the average daily trading volume

12 and on each one of those days, the price went up,

13 would that indicate that perhaps your 15 percent

14 assumption would not be appropriate to use on that

15 given stock?

16 A Well, at a point in time you'd only have

17 historical data first. So if I'm sitting here at

18 February 14, 2019, I can only look back. I

19 couldn't look forward.

20 Q Correct.

21 A Correct.

22 Q But you could do an analysis for a

23 specific date earlier in time. Right?

24 A Correct.

25 Q So if you did that for a specific date and

1 it turned out that what was predicted was the
2 opposite of what happened, would that call into
3 question the applicability of this model going
4 forward?

5 A You mean one instance or consistently over
6 time?

7 Q Say it was consistent over time.

8 A Consistent over time, I might look at
9 that, but if it was one instance, it can happen.

10 Q Okay. And you used this as a predictive
11 model for dates. You said you can't look back.
12 Right?

13 You're looking at August -- you're looking
14 at February 14, 2019, and 2020?

15 A Yes.

16 Q Is that right?

17 A Those are my valuation dates, yes.

18 Q Okay. So what did you mean when you said,
19 you know, you can't look back? What was your
20 point there?

21 A That's not what I said. I said you can't
22 look forward.

23 Q You can't look forward. Okay.

24 But since it's well after February 1 --

25 excuse me, February 14 of 2020, right now, to look

1 at time periods subsequent to that, one would have

2 to look back but not forward. Right?

3 A What do you mean? If we're doing it as of

4 today? I'm not sure I understand.

5 Q Well, you used an as-of date. Right?

6 A Correct.

7 Q And I grant you that, if the as-of date

8 were today, one could not look forward with any

9 certainty, but you used an as-of date that was in

10 the past. Right?

11 A Correct.

12 Q So to, quote/unquote, "look forward" from

13 the date you used, one could still use historical

14 data because there's all the time between

15 February 14, 2020, and today that's actually

16 elapsed. Right?

17 From your vantage point of February 14,

18 2020, it's looking forward. But you're not trying

19 to predict the future. You have actual data about

20 subsequent events. Correct?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: I have actual data of

23 what actually happened; however, I'm

24 looking at this at a point in time,

25 February 14, 2019.

1 So the question is, What was known or
2 knowable at that date?

3 So if they were going to do a
4 transaction on February 14, 2019, a
5 buyer -- whoever bought that stock could
6 only look back. He couldn't look forward.
7 They would not know what was going to
8 happen.

9 BY MR. ZIMMER:

10 Q If your model were consistently wrong
11 about the impact of high-volume trading on the
12 price of Navidea shares, subsequent to
13 February 14, 2020, would that call into question
14 its applicability on that date?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: No. It's only what's
17 known or knowable.

18 So if I would have looked back and
19 saw that it was wrong, possibly, but
20 looking forward, there's no way to know
21 the future.

22 As of February 14, 2019, there's no
23 way to know at that time what was going to
24 happen in the future.

25

1 BY MR. ZIMMER:

2 Q Did you look at actual trading data for
3 February 14, 2009?

4 A Yes.

5 MR. KAZAN: Just a minute. I think
6 you got the date wrong.

7 MR. ZIMMER: I'm sorry.

8 BY MR. ZIMMER:

9 Q Did you look at actual trading data for
10 February 14, 2019, and 2020?

11 A Yes.

12 Q Okay. Did you look to see if there were
13 high-volume trading days bracketing that time
14 period? Higher-volume trading than on that date?

15 A We look at -- we look -- we did a lookback
16 from that looking back. I don't recall any
17 higher-volume days.

18 Q Did you look for them?

19 A Yes.

20 Q Okay. You don't think there were --

21 A I don't recall them --

22 Q -- more than 15 percent?

23 A I don't recall any drastic movements in
24 the trading volume.

25 Q But you're talking about 15 percent.

1 Right?

2 A Yes.

3 Q Is the threshold. Right?

4 A That's what we're saying over an average
5 of time. That's what you can . . .

6 Q Okay. Did you look back to see if there
7 were, in fact, trading days where the volume
8 exceeded 15 percent of the average daily trading
9 volume?

10 A No. I don't recall doing that.

11 Q Okay. So you didn't bother to look at
12 what the real-world impact of that might have
13 been?

14 A Again, we didn't do that specific
15 analysis.

16 Q Okay. And you didn't look at the known
17 time period the entire time up until the time --
18 the date you did your analysis either.

19 Is that correct?

20 A What do you mean? From 2019 back? Is
21 that what you're asking?

22 Q Well, the approximate date that you
23 submitted this report was -- what? -- I believe
24 around November 15. Sometime in November of this
25 year. Correct?

1 A Correct.

2 Q Did you look at the time period prior to,
3 you know, putting this in writing to see if the
4 actual outcomes of high-trading volume days was
5 consistent with what your model would predict?

6 A Again, at the time we did this analysis,
7 as of February 14, you'd only have historical.
8 You wouldn't have future information.

9 Q Understood. And you're assuming, then,
10 that the person who would be willing to buy the
11 shares would have access to it and would use your
12 model to price the stock?

13 A What I'm saying is, the person who's
14 buying this information as of February 14, 2019,
15 would only have historical data. He would not
16 have future data.

17 Q No. What I'm asking you is, Are you
18 saying that a buyer would use your -- the MPI
19 study to determine the price it was willing to
20 pay?

21 A Probably not, because it's a proprietary
22 model.

23 Q Okay. So would the stars just align and
24 they would somehow automatically pay that same
25 exact price? Is that how predictive your model

1 is?

2 A I don't know that it's that exact, but

3 it's an assumption.

4 Q Okay. And if someone were to say, "Hey,"

5 you know, "I commissioned MPI to do a study for

6 me, and this is all it's worth," is the potential

7 seller obligated to sell his shares on that date

8 if he doesn't like the price that's offered?

9 A No. Not that I'm aware.

10 Q And if someone holds restricted shares in

11 a publicly traded company and the price is not

12 sufficient to motivate them to sell on any given

13 day, and assuming they don't need the funds or

14 have any other reason to disgorge the stock, is it

15 fair to assume they would sell the stock on that

16 date?

17 A Again, I can't speculate what an

18 individual seller would do or individual buyers

19 would do.

20 Q Okay. Fair enough. But that's what

21 you're doing here. You're speculating that he

22 would sell it on the first day. Correct?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: Our assumption is that

25 the sale would happen as soon as it's

1 available for sale.

2 BY MR. ZIMMER:

3 Q But an assumption is a speculation.

4 Right? It's a fancy-sounding one. It's

5 expensive. But an assumption is a speculation.

6 Correct?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: It's an assumption. I

9 don't --

10 BY MR. ZIMMER:

11 Q How does an assumption differ from a

12 speculation?

13 A A speculation is saying he would have sold

14 it at a certain block of time when it's the

15 highest price. I'm saying he sold it on the first

16 available date. That's the assumption.

17 Q Do you know anything about Dr. Golberg's

18 financial condition?

19 A No.

20 Q Do you know anything about his holdings in

21 Navidea?

22 A No.

23 MR. KAZAN: Asked and answered.

24 BY MR. ZIMMER:

25 Q Do you know anything about the knowledge

1 and research and information he had about Navidea

2 and its potential price changes over time?

3 A No.

4 Q Okay. But you assumed that he would sell

5 it on that date. How is that more than

6 speculation?

7 You don't even have inputs to speculate.

8 You simply assigned that date. Correct?

9 A I assumed that date. Yes.

10 Q Okay. What were the factors that went

11 into your assumption?

12 A That was the first available sale.

13 Q Did you take -- did you assume that he

14 needed funds to fund his daily living?

15 A No.

16 Q Did you assume he had better, higher uses

17 for the funds as of that specific date?

18 A No.

19 Q Did you assume that he was offered an

20 attractive purchase price on that date?

21 A No.

22 Q Okay. You kind of assumed that the price

23 would have been remarkably lower than the market

24 price. Right?

25 MR. KAZAN: Object to the form.

1 THE WITNESS: What do you mean?

2 BY MR. ZIMMER:

3 Q 50-plus percent lower than the market
4 price, if he did a private placement on that day.

5 Right?

6 A It wouldn't be 50. It was like
7 40-something.

8 Q But you assumed that that would be the
9 date he would pick to sell?

10 MR. KAZAN: Objection to form.

11 THE WITNESS: That was my assumption.

12 MR. ZIMMER: Okay.

13 BY MR. ZIMMER:

14 Q Did you come up with that assumption, or
15 did someone ask you to assume that date?

16 A That was strictly math. I went to six
17 months and 18 months after the date of the
18 agreement.

19 Q Well, I understand. Was that -- was it
20 your -- was it your choice to use that date as the
21 assumed sale date -- or those two dates as the
22 assumed sale date, or did someone instruct you
23 that you should use those as the assumed sale
24 date?

25 A I don't recall how that came about. I

1 don't know. I don't remember.

2 Q You don't? Did you discuss it internally
3 at the firm?

4 A No. I discussed it with counsel.

5 Q Okay. And you don't recall how it came
6 about?

7 A I don't.

8 Q Okay. Has Navidea stock been thinly
9 traded throughout its history in your -- you know,
10 your assessment of thinly traded?

11 A No.

12 Q When was it not thinly traded?

13 A I don't recall the dates, but there was a
14 point when it started trading more actively,
15 subsequent to February 2020.

16 Q So you looked at the subsequent history as
17 well?

18 A I did, yes.

19 Q Okay. When you talk about timing the
20 market, how is your assumption that these shares
21 would be sold on the very first day they could be
22 sold, regardless of financial condition, other
23 opportunities, you know, available price, you
24 know, the heavy discount -- how is that any
25 different than timing the market that's just

1 negative for Dr. Golberg?

2 MR. KAZAN: Object to the form.

3 THE WITNESS: What do you mean?

4 BY MR. ZIMMER:

5 Q Well, aren't you, in essence, assuming --

6 you're assuming that he would sell it on an actual

7 date certain. Right?

8 Not even a range of dates. Right?

9 A Correct. Yes.

10 Q How so was that a more valid assumption

11 than any other date that one might assume he would

12 sell the shares?

13 A Again, I can't speculate when he would

14 sell the shares or not sell the shares. My

15 assumption was he sold it when it could be sold.

16 Q But you say you can't speculate on when he

17 would.

18 A Correct.

19 Q But you assigned a specific date and went

20 through an entire 12-page -- is it a 12-page

21 report? I believe it's 12. I want to give you

22 full credit here.

23 A Fifteen pages.

24 Q Oh, 15.

25 A It doesn't include the exhibits at the

1 end, of course.

2 Q I'll give you extra credit for that.

3 A Okay.

4 Q And it also does include some stuff about
5 Macrophage that we'll get to later.

6 But you produced this whole entire report
7 based on the assumption that he would sell two
8 specific blocks of shares on two specific dates.

9 Right?

10 A That's correct.

11 MR. KAZAN: Object to the form.

12 THE WITNESS: Sorry.

13 BY MR. ZIMMER:

14 Q And you don't consider that speculating on
15 how he would time the market?

16 A I think that has nothing to do with timing
17 the market. It's just a specific date when it
18 could be sold.

19 Q Well, so is, like, May 10, 2020, or
20 whatever. And I'm -- just to be fair, I'm not
21 picking -- even if it's coincidental, I'm not
22 suggesting a date that was picked by Mr. Orr or
23 referenced anywhere in this case.

24 Like, how is that any different from any
25 other date in time as far as likelihood that he

1 would sell the shares on that date?

2 A Again, I can't speculate when he would
3 sell the shares. I just chose the date when the
4 restriction period was up.

5 Q Okay. If someone did some research into
6 Dr. Goldberg's financial condition and, you know,
7 market conditions and known information about
8 Navidea and trading history and financial
9 wherewithal and, you know, available price on
10 specific dates and picked a different date, would
11 that be any more speculative than your assumption
12 that he would sell them on that particular date?

13 Or less, if they had actual real-world
14 inputs to drive their assumption?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Again, I think any time
17 you look at a specific market timing, that
18 could be speculative. You don't know --
19 sitting here today, you don't know when he
20 would have sold or not sold.

21 BY MR. ZIMMER:

22 Q Would information based on actual known
23 facts be more speculative an assumption than your
24 assumption, which is based on none of that?

25 MR. KAZAN: Object to the form.

1 THE WITNESS: Again, there's no way
2 to speculate when he would or would not
3 have sold.

4 BY MR. ZIMMER:

5 Q But you did?

6 A I assumed, when the restriction was up, he
7 would sell. That was my assumption.

8 Q How is that not speculating on when he
9 would sell?

10 You picked a date in time to value his
11 shares based on an assumption he would sell them
12 on that date. Right?

13 MR. KAZAN: Object. Asked and
14 answered, and you're bordering on
15 argumentative at this point.

16 MR. ZIMMER: I disagree with the
17 argumentative point, and the asked and
18 answered -- this is in the context of an
19 inquiry here, so . . .

20 BY MR. ZIMMER:

21 Q Is it correct?

22 A I picked a date that was my assumption.

23 Q And you don't -- you can differentiate
24 that, in terms of market timing, from anyone else
25 picking any other date? How?

1 A I can't. You can pick any date. You just
2 don't -- no one knows what date.

3 Q And you did. Right?

4 A I picked a date when the restrictions
5 lapsed.

6 Q What makes your date the right date?

7 A I don't know my date's the right date.
8 That's the assumption I made.

9 Q Okay. And how would you know if anyone
10 else's date was the right date?

11 A You wouldn't.

12 Q Okay. So now if the Navidea shares --
13 you have two dates. Right?

14 You have February 2019 -- February 14,
15 2019, and February 14, 2020.

16 Right?

17 A Correct.

18 Q Even assuming you couldn't look at time
19 frames outside of that -- and I take issue
20 with -- as a --

21 MR. KAZAN: Greg, I'm just going to
22 stop you. Ask the question. You're
23 starting to inject your personal
24 statements, and I'm going to object.

25 At a certain point, I'm going to

1 instruct him not to answer simply because
2 your question is not going to be clear.

3 MR. ZIMMER: Well, if you think my
4 question isn't clear, let me know, because
5 I want to make it clear.

6 And I grant you that this is a
7 complicated area, and I'm trying to
8 develop clear and meaningful questions for
9 him and get good information.

10 I'm not trying to trick you. As I
11 said, the record will reflect what you
12 said. Nothing I say you said is going to
13 change what you said. I'm not that kind
14 of a lawyer.

15 BY MR. ZIMMER:

16 Q So is it your position that you cannot --
17 that if you want to apply your model and you want
18 to determine its predictive value, that you
19 cannot look at a date after February 14, 2020,
20 apply your model, and see whether it was correct
21 or not?

22 MR. KAZAN: Object to the form.

23 BY MR. ZIMMER:

24 Q As one way of determining the predictive
25 value of your model?

1 A What I'm saying is, as of either of these
2 dates, the February 14, '19, or February 14, '20,
3 you would not have future information. You would
4 only have historical information.

5 Q If you are using your 15 percent in your
6 model -- I think maybe refer to it that way.

7 Right?

8 You're using two separate inputs. You've
9 got all the things listed in the chart on the
10 bottom of page 10.

11 And let me just ask you -- sorry.

12 If we went through the chart on page 11,
13 which is for the later time period, would there
14 be material differences in your answers to those
15 questions about all of those variables?

16 I think there was one with respect to the
17 holding period.

18 A The only difference is -- well, obviously
19 the volatility changed, but the only difference is
20 the holding period was this model's -- the page
21 on -- page 11 is using the six-month holding
22 period.

23 Q And why does that one use the six-month
24 holding period?

25 A Because when we calculated, at the top of

1 page 10, for that second period, we said it would
2 take five quarters to sell.

3 Q It was a shorter predicted --

4 A It was shorter.

5 Q -- time period needed to dribble the
6 shares out to the market, in your view, using the
7 same 15 percent. Right?

8 A That's correct.

9 Q So there were two components to your
10 analysis, basically, and one is the application of
11 the methodology of the MPI study. Right?

12 A Yes.

13 Q And the other one is the 15 percent input.
14 Right?

15 A Correct.

16 Q The others are kind of objective things.
17 Right?

18 A Correct.

19 Q The only variable that is not,
20 quote/unquote, "objective" is the holding period,
21 and that's based on the 15 percent. Correct?

22 A Correct.

23 Q Okay. So if one wanted to analyze the
24 predictive value of the combination of the
25 15 percent and the MPI study, couldn't one look at

1 anecdotal dates in various public shares and look
2 at high-trading volume days, applying the model as
3 of that date, and then look at the actual impact
4 on price to determine the predictive value of your
5 model? Wouldn't that be fair?

6 MR. KAZAN: Object to the form.

7 THE WITNESS: I'm not sure I
8 understand that.

9 BY MR. ZIMMER:

10 Q So the purpose of, for example, page 10 --
11 Right?

12 A Mm-hmm.

13 Q -- was to use your 15 percent of daily
14 trading volume assumption. Right?

15 A Correct. Yes.

16 Q Input that and some Navidea-specific
17 information into your model. Correct?

18 A Correct.

19 Q And come up with a predicted impact on
20 stock price. Right?

21 A Yes.

22 Q Of a sale of a high volume of shares into
23 the market. Correct?

24 A Correct.

25 Q Okay. If one wanted to double-check the

1 predictive value of the combination of the
2 15 percent and the MPI study methodology, couldn't
3 you go back over time, look at different
4 companies, and go to specific dates where there
5 were exceptionally high trading volumes, apply the
6 15 percent assumption, apply the MPI study
7 methodology, predict what the price impact would
8 have been on that date, and then compare it to the
9 actual?

10 Wouldn't that be one fair way to assess
11 the predictive value of the model?

12 MR. KAZAN: Object to the form.

13 THE WITNESS: Potentially.

14 BY MR. ZIMMER:

15 Q Yes or no? Potentially? I don't
16 understand what "potentially" means.

17 A I've never done that analysis, but you
18 could do it, I guess.

19 Q No, no. It's not doing the analysis.

20 The question is, Would that be a
21 reasonable way to double-check the predictive
22 value of this model?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: If you had a big enough
25 population, you could. Yes.

1 BY MR. ZIMMER:

2 Q Okay. Because the point of this is to
3 predict, on any given day, what the impact of a
4 more than 15 percent increase in trading volume
5 would have on the price of the stock on that date.

6 Right?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: Again, there's two
9 issues: the 15 percent and the model
10 itself.

11 BY MR. ZIMMER:

12 Q Well, the purpose of the analysis that you
13 did, by combining the 15 percent assumption with
14 the MPI study methodology, was to predict, for a
15 given day, what the impact of a certain volume of
16 trading would be on the price of the shares on
17 that day. Correct?

18 MR. KAZAN: Object to the form.

19 THE WITNESS: Correct. Yes.

20 BY MR. ZIMMER:

21 Q And would your model ever predict that the
22 price of the stock would go up when large blocks
23 of shares were traded?

24 A I don't know the answer to that.

25 Q Well, you must know the answer. Right?

1 I mean, you -- is it possible that, even
2 with one quarter to sell -- you know, you know how
3 this study -- I mean, there's only two
4 possibilities: one, you don't know what you
5 would get when you put into this model; or two,
6 this is a discount model that necessarily yields a
7 discount number.

8 I mean, it says here, "Predicted Private
9 Placement Discount."

10 A Yeah. It generates a discount. It
11 predicts a discount.

12 Q It would always predict a lower price.

13 Right?

14 A That's correct. Yes.

15 Q Okay. So if there were times where the
16 price is actually higher, that would be contrary
17 to the predictions of your model every time.

18 Right?

19 A That's correct. Yes.

20 Q Okay. Do you know if anyone has ever done
21 any kind of a secondary or different type of
22 analysis to try to double-check the accuracy of
23 the predictions made by the combination of the
24 15 percent of daily trading volume thresholds and
25 the MPI study methodology?

1 A No.

2 Q You don't know whether they have, or you
3 know they haven't?

4 A I don't know whether they have.

5 Q Okay. Have you ever heard it discussed
6 within the firm?

7 A No.

8 Q Okay. Have you ever considered, before
9 applying it, whether you should do some kind of
10 real-world reality check to see how predictive it
11 actually is?

12 A No.

13 Q It's kind of just on the shelf, and when
14 you need to predict a discount, you pull this off
15 the shelf and you use your 15 percent and
16 you -- and that is the way that your firm values
17 the impact of high-volume trading on publicly
18 traded shares. Right?

19 A Yes.

20 Q Okay. I mean, what's your understanding
21 of how peer review works?

22 A My understanding of peer review is someone
23 else in the industry reads your analysis.

24 Q Do they vet it? Do they try to
25 double-check it? Do they try to confirm its

1 usefulness or no?

2 A That, I don't know.

3 Q You don't know. Okay.

4 Have you ever, on your own initiative,

5 outside an engagement, just applied the

6 combination of the 15 percent of daily trading

7 volume assumption and the methodology on any given

8 day just to see whether it accurately predicted

9 reality?

10 A No.

11 Q Do you know if anyone at the firm ever

12 has?

13 A Not that I'm aware of.

14 Q Why wouldn't you try to do that before you

15 used it in an opinion like this?

16 A Because the 15 percent is a basic market

17 guideline that we get from traders.

18 Q No, no. We've crossed that bridge. Okay?

19 A Yes.

20 Q Right or wrong, you're using that same

21 number throughout.

22 But you have a combination approach here,

23 which is to incorporate the 15 percent of daily

24 trading volume threshold into the MPI study

25 methodology. Right?

1 A Correct.

2 Q When you want to value the impact of high
3 trading volume on the price of a publicly traded
4 stock. Right?

5 A Correct.

6 Q Did it ever occur to you that that is
7 something that could be done on any given date on
8 any given stock, and you can actually get a
9 reality check or double-check the predictive value
10 if you did that on a day or two just to see what
11 happened anecdotally?

12 A You'd have to do it over a long period of
13 time. And, again, you don't know -- if it happens
14 on one day, you don't know that it's going to
15 happen on the next day.

16 Q But if it -- if you don't know if it's
17 wrong, it's wrong. Right?

18 A True.

19 Q So if you were going to predict something
20 and reality says it's more likely wrong than not
21 in this particular instance, then what's the value
22 of it?

23 MR. KAZAN: Object to the form.

24 BY MR. ZIMMER:

25 Q Just to stand on theory?

1 MR. KAZAN: Object to the form.

2 THE WITNESS: Again, you'd have to
3 look at a number of stocks over a period
4 of time to see what the market does.

5 BY MR. ZIMMER:

6 Q Okay. But if you used this on a specific
7 date on a specific stock and it was completely
8 wrong, that wouldn't impact your willingness to
9 use it repeatedly?

10 MR. KAZAN: Object to the form.

11 THE WITNESS: Again, you'd have to
12 look at it over time.

13 BY MR. ZIMMER:

14 Q No, no. What I'm saying is if you did
15 apply it on a single day and the results were
16 off-the-chart opposite of what this would predict,
17 would that raise any question in your mind as to
18 whether you should use it going forward?

19 A Again, one instance, you don't know
20 the -- you don't know if it's going to happen
21 every time or not. So, again, it could be off one
22 day. That's possible.

23 Q Okay. And it could easily be off on
24 January -- on February 14, 2019, or February 14,
25 2020?

1 A It's possible.

2 Q But you think it would be more accurate
3 than real-world evidence of what the impact of
4 high-volume trading days was upon share price?

5 MR. KAZAN: Object to the form.

6 THE WITNESS: Again, it's a
7 predictive model, so you don't know unless
8 you -- you'd have to look historically at
9 the numbers.

10 BY MR. ZIMMER:

11 Q But could you use it to -- when you say
12 "predictive," you are linking predictive to
13 forward-looking. But you --

14 A Correct.

15 Q -- never used it forward-looking. You
16 always used it on dates in the past.

17 When you did your report, February 14,
18 2019, was long in the past. Correct?

19 A That's correct.

20 Q And when you did your report, February 14,
21 2020, was long in the past. Right?

22 A That's correct.

23 Q So you could have just as easily looked at
24 the Navidea trading information and applied it to
25 other dates too -- right? -- and seen if this was

1 actually predictive of what happened on any number
2 of those dates -- right? -- to determine whether
3 it was appropriate to use it to predict the impact
4 of high-volume trading on Navidea's share price,
5 couldn't you?

6 MR. KAZAN: Object to the form.

7 THE WITNESS: The issue is that, as
8 of February 14, a buyer would not have the
9 that information, so he wouldn't be able
10 to do that.

11 BY MR. ZIMMER:

12 Q But if you looked back -- even if you say
13 you want to look back from that date -- if you
14 look back from February 14, 2020, and looked at
15 high volume -- wouldn't it make sense to
16 double-check to say, Okay. There have been
17 however many high-volume trading -- in your mind,
18 high-volume trading, more than 15 percent --
19 right? -- you know, in the history of the stock
20 that would be known to someone on February 14,
21 2020.

22 I could take my assumption, apply my
23 methodology, and see what would have happened on
24 this date, on this date, on this date, on this
25 date, on this date, just to see if there's

1 something unique -- or not even unique, but
2 something specific to Navidea -- it could be also
3 specific to other companies -- that renders this
4 assumption and model not a reliable predictor of
5 the impact of trading volume on share price.

6 You could do that. Right?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: We could do that, yes.

9 BY MR. ZIMMER:

10 Q Did you do it?

11 A No.

12 Q Okay. Now, you opined that Mr. Orr did
13 not take into consideration the thinly traded
14 nature of Navidea shares.

15 What's that opinion based on?

16 A That was on page 13 of my report. Or it
17 actually starts on page 12.

18 Q Great.

19 A Essentially what we're saying is it would
20 take -- he didn't take into account that it would
21 take more than one quarter to sell the shares. He
22 just assumed he could go down and sell them.

23 Q But what you really mean is -- you said
24 the 15 percent is not peer reviewed or, you know,
25 Holy Grail. Right? Come down from the mountain

1 or anything.

2 He did not -- clearly, he didn't use your
3 assumption as to how long it would take to dispose
4 of the shares without affecting the market.

5 Right?

6 A That's correct. Yes.

7 Q Is that what you're taking issue with, is
8 that he didn't use your assumption?

9 A I'm saying he didn't do any assumption.
10 He didn't do anything.

11 Q Well, how do you know that?

12 A It wasn't in his report. He just said,
13 "Here's the stock. Here's the price on that
14 day."

15 Q Right.

16 A So he assumed you could sell it all on the
17 same day.

18 Q Okay. You say he didn't take into account
19 the thinly traded nature of Navidea stock.

20 Isn't what you're actually saying, In my
21 opinion, the thinly traded nature of Navidea stock
22 would prevent it from all being sold on a single
23 day without impacting price?

24 A Yes.

25 Q You're not -- you don't know, literally,

1 that he didn't take it into account.

2 You're saying, if he had used your
3 assumptions, clearly, and your model, it clearly
4 wouldn't have come out with that result. Correct?

5 A Correct.

6 Q And that's basically what your opinion is:
7 You think he should have. Correct?

8 A Correct.

9 Q Okay. But, again, do you know whether
10 this is the only -- is your proprietary -- I guess
11 it would great if it was.

12 Is your proprietary model combined with
13 this 15 percent assumption the only way that one
14 could attempt to take into account the thinly
15 traded nature of Navidea stock when trying to
16 value shares?

17 A No.

18 Q Okay. And does your analysis assume --
19 well, let me ask you first, are you aware that
20 there were restrictive legends placed on shares
21 issued in Dr. Golberg's name related to a lockup
22 agreement and an escrow agreement?

23 A Yes.

24 Q Okay. And that was in addition to a
25 restrictive legend saying that the shares had not

1 been publicly registered. Right?

2 A That's my understanding. Yes.

3 Q Okay. Did your -- did any of the shares

4 that formed -- excuse me.

5 Did any of the shares included in private

6 placements that formed the basis for the MPI study

7 involve restrictive legends like the ones put on

8 the shares issued in Dr. Golberg's name relating

9 to an independent lockup and escrow agreement,

10 rather than just Regulation D?

11 A I don't know the answer to that.

12 Q Okay. Does your assumption that he would

13 sell the shares on those dates assume that those

14 restrictive legends had been removed on those

15 dates?

16 A Yes.

17 Q Okay. And do you disagree that the

18 shares wouldn't be salable with those legends on

19 them?

20 MR. KAZAN: Object to form.

21 THE WITNESS: Can you repeat that?

22 BY MR. ZIMMER:

23 Q Do you disagree with the fact that shares

24 with those two restrictive legends regarding a

25 lockup period and an escrow period made the shares

1 nonsalable?

2 A Correct. I agree.

3 Q Do you know whether Dr. Golberg ever asked

4 to have the legends removed?

5 A I do not.

6 Q Do you know whether Navidea ever refused

7 to remove the legends?

8 A I do not.

9 Q Okay. Are you still okay? I'm going to

10 move on.

11 A How much longer do we have?

12 Q Much less time. Yeah. I predicted 2:00.

13 I will want to take a little time to go

14 over my notes before we wrap up, but certainly we

15 will be done with the Macrophage portion by two

16 o'clock. It's 1:05 now.

17 A Okay. We can finish up.

18 Q Okay. So you state in your report that

19 there were three types of potential valuation

20 analyses that can be done on a company. Correct?

21 A Correct.

22 Q Can you just state what they are?

23 A There's an asset approach, an income

24 approach, and a market approach.

25 Q Is the asset also sometimes referred to as

1 book value approach?

2 A No.

3 Q Is that what you're referring to?

4 A Not really. Basically, an asset approach

5 is you take all of the assets at market value less

6 the debt at market value.

7 Q Market value as opposed to book value?

8 A Correct.

9 Q Is book value also a way to value a
10 company?

11 A No, not particularly. It depends on the
12 company, but generally, no.

13 Q Okay. And why is that?

14 A Because book value is historical cost,
15 whereas valuation is typically market value.

16 Q Okay.

17 A There are exceptions to that.

18 Q Okay. But that -- if were it appropriate,

19 I mean, that would just be a fourth. Right?

20 I'm just trying to understand that we're
21 talking about the same thing as we talk.

22 So when you say an "asset value," you're
23 talking about an independent valuation of the
24 assets, not going off what's recorded in the
25 books. Correct?

1 A Well, there are cases where the assets of
2 a company reflect market value, such as a bank
3 or --

4 Q Meaning they're not -- they're
5 advertised --

6 A They market to market.

7 Q Okay. And you talk about the market
8 approach. Right?

9 You said that the way to conduct a market
10 analysis is to look at comparable compensation.

11 Is that right?

12 A That's one way, yes.

13 Q How that would work?

14 A Basically, you can go out and either look
15 at other publicly traded companies in the same
16 market or you can go look at transactions in
17 either private or public companies.

18 Q And when you say, "publicly traded," is
19 that just because the information is available?

20 A Yes.

21 Q Okay. And so there's nothing -- and is
22 the distinction between publicly traded and not
23 publicly traded meaningless in terms of the value
24 of the companies?

25 MR. KAZAN: Object to the form.

1 THE WITNESS: No, because you can
2 look at public companies in the same
3 industry and come up with market multiples
4 and market indications, or can you look at
5 transactions.

6 So sometimes you'll have private
7 companies that sold and you can determine
8 indications of value from those private
9 companies.

10 BY MR. ZIMMER:

11 Q How would you get that information?

12 A We have access to databases that report
13 the sales, so they give us all the metrics we
14 need.

15 Q Like, what's the basis for the reporting
16 on that? Do you know?

17 A What do you mean?

18 Q Well, you said you have access to
19 databases. Do you know where they get their
20 information?

21 Is that, like, they review documents?

22 How do they get that information that you
23 get from your, you know --

24 A They have -- there are brokers that report
25 the deals to the database company.

1 Q Okay. So it's reported.

2 A There's a couple sources. One is
3 reported. The other way is there's public
4 companies that buy private companies, and that's
5 disclosed. So you could -- there's databases or
6 information sources that give you that
7 information.

8 Q Okay. If there were recent transactions
9 in the same company, would those be instructive?

10 A Yes.

11 Q Okay. Are you familiar with the concept
12 of a bona fide offer?

13 A That's a legal term, but I know that
14 offer --

15 Q Well, I'm not using it in a legal sense,
16 but, you know, an actual credible offer to
17 purchase.

18 Would you consider that a meaningful input
19 in a market analysis?

20 A We would look at that, yes.

21 Q Okay. It's something you would consider?

22 A Yes.

23 Q Okay. How would you know about that?

24 Is there, like, a resource you would use
25 to look for those types of offers as opposed to

1 closed transactions?

2 A Well, if there's offers, usually the

3 company discloses that to us.

4 Q The company would disclose it to you?

5 A Absolutely.

6 Q And how do you know whether those
7 disclosures are, you know, reliable? accurate?

8 A Well, we usually look at the offers that
9 come in. We use that in certain situations.

10 Q Okay. And it would be kind of a judgment
11 as to whether it's reliable?

12 A Well, it depends. Like, if there's
13 multiple offers -- sometimes you get a case where
14 there's multiple offers on the table and you
15 figure out, like --

16 Q What I'm saying is, since it's not a
17 completed transaction, your firm would use some
18 type of, you know, discretion to determine whether
19 the information was credible since it wasn't,
20 like, verifiably completed already.

21 Is that right?

22 A Well, there's a lot of situations that can
23 happen. I mean, you can get an offer -- usually
24 you get a letter of intent first, which gives you
25 kind of an indication of the value. Then they'll

1 go through a due diligence process, and then they
2 come up with a purchase agreement.

3 Q Okay. Did you know that Navidea had told
4 the New York Stock Exchange that it was expecting
5 investments of \$10 and 15 million in Macrophage?

6 A Yes.

7 Q Okay. And were you aware that Navidea was
8 under -- I don't mean it in a pejorative way, but
9 under a threat, potentially, of delisting from the
10 New York Stock Exchange based, in part, on
11 shareholder equity requirements?

12 A I was aware of that, yes.

13 Q Okay. Do you know how seriously that was
14 taken as a concern inside of Navidea?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: No.

17 BY MR. ZIMMER:

18 Q Okay. You didn't look at any board
19 minutes or deposition testimony or anything about
20 how seriously they took that threat and how they
21 perceived it with respect to the company's future?

22 A No.

23 Q Okay. And did you know that it was the
24 CEO, CFO, and COO, same person, of Navidea who
25 made representations to the New York Stock

1 Exchange?

2 MR. KAZAN: Object to the form.

3 THE WITNESS: No.

4 BY MR. ZIMMER:

5 Q Do you know that they were made in order
6 to address New York Stock Exchange's concerns
7 about shareholder equity in the context of trying
8 to avoid delisting?

9 MR. KAZAN: Object to the form.

10 THE WITNESS: Again, I don't know.

11 BY MR. ZIMMER:

12 Q You don't know?

13 A I don't know.

14 Q Are you aware of the requirements about
15 accurate statements to regulators by officers of
16 public companies?

17 MR. KAZAN: Object to the form.

18 THE WITNESS: From a layman's point
19 of view, but not from a legal point view,
20 yes.

21 BY MR. ZIMMER:

22 Q What's your understanding?

23 A Well, my understanding is that it's --
24 there's criminal issues with making false
25 statements to the New York Stock Exchange.

1 Q Okay. I think, in your report, you take
2 issue with Mr. Orr's consideration of those
3 statements. You go into greater detail about he
4 doesn't talk about what type of interest, what
5 percentage of interest, and things of that nature.

6 Are you finding fault with his considering
7 those statements to the New York Stock Exchange
8 under those circumstances, or are you just saying
9 that a more detailed analysis was required?

10 A I'm just saying that there is a more
11 detailed analysis required.

12 Q Okay. Did you know that, under the
13 August 14 agreement, the intent was to give
14 Dr. Golberg voting control of Macrophage?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Yes.

17 MR. ZIMMER: Okay.

18 BY MR. ZIMMER:

19 Q You talked about people wanting -- well,
20 okay. Let me back up a little bit.

21 The representation to the stock exchange
22 about these offers was made in the context of a
23 representation that Macrophage's financial results
24 would continue to be consolidated with Navidea's
25 financial results and, therefore, an influx of

1 capital into Macrophage would impact Navidea's
2 shareholder equity.

3 Were you aware that that was the nature of
4 the representation?

5 A No.

6 MR. KAZAN: Object to the form.

7 THE WITNESS: Sorry.

8 MR. ZIMMER: Okay. If you would
9 pause for a second, especially when I ask
10 good questions.

11 BY MR. ZIMMER:

12 Q Do you know what the requirements are for
13 a public -- requirements or -- do you know what
14 the circumstances are under which a public company
15 may consolidate the financial results of a
16 subsidiary for report purposes?

17 A Not off the top of my head.

18 Q You don't. Okay.

19 Do you know if it has to do with the
20 percentage of ownership?

21 A That's my understanding.

22 Q Okay. So if Navidea's representing that
23 they're going to consolidate the financial results
24 post investment, isn't it reasonable to make an
25 assumption that Navidea would retain the necessary

1 percentage of ownership to consolidate?

2 MR. KAZAN: Object to the form.

3 THE WITNESS: Again, that's an

4 accounting issue.

5 BY MR. ZIMMER:

6 Q I thought you were an accountant.

7 A I am an accountant. But that's public

8 reporting, and those rules have changed since I

9 did public reporting.

10 Q Okay. You would not expect, though, the

11 CEO of a public company to make knowingly false

12 statements to the New York Stock Exchange about

13 something like that. Right?

14 A Again, I can't speculate.

15 Q Okay. But your understanding is there

16 would be criminal penalties if they did?

17 A That's my understanding, yes.

18 Q Okay. Does the existence of criminal

19 penalties from misstatements like that lend some

20 credibility to statements when you're trying

21 to -- you said you have to do a little bit of an

22 analysis to see whether you could use the

23 company-provided information.

24 If they said, "Look, we've made these

25 statements to regulators under penalty of

1 perjury," I mean, would that be a factor you would
2 take into consideration when you were trying to
3 decide whether to use that information as part of
4 your analysis?

5 A Again, if we had an offer and we had the
6 details, we'd use it.

7 Q Well, if you had information from the
8 company, it may not have been as concrete, but
9 they said, "Look, we've told our regulators that
10 this was going to happen, under penalty of
11 perjury," would that carry some weight in terms of
12 the credibility of the information?

13 A As far as it existed, yes. We would say
14 yes, it existed.

15 Q No. As far as whether it was accurate,
16 that it was true, that they weren't making it up.

17 A Yes.

18 Q Okay. So if one was familiar with the
19 ownership percentage that a public company would
20 have to retain in order to consolidate, couldn't
21 one back out the percentage of ownership the
22 company could possibly sell and still be left with
23 the required amount -- percentage to consolidate
24 financial results?

25 A What do you mean? In terms of coming up

1 with value?

2 Q Well, let me just give you -- and, again,

3 this is illustrative.

4 If one needed to have a 51 percent

5 ownership in a company to consolidate and one

6 owned 95 percent of the company, then could one

7 sell 95 percent of the company and continue to

8 consolidate?

9 MR. KAZAN: Object to the form.

10 THE WITNESS: I don't understand the

11 question. Could you repeat the question?

12 MR. ZIMMER: Yes.

13 BY MR. ZIMMER:

14 Q If the consolidation rules -- the public

15 reporting rules required a 51 percent ownership --

16 A That's your assumption.

17 Q Assumption.

18 A Okay.

19 Q -- in order to consolidate financial

20 results of a subsidiary, and the public company

21 owned 95 percent of the subsidiary, could it sell

22 95 percent of the subsidiary and continue to

23 consolidate?

24 A No.

25 Q You'd have to subtract the 51 percent they

1 would be required to hold. Correct?

2 A Right.

3 Q Okay. Now, you also talked about

4 preferred shares.

5 A Correct.

6 Q What is the implication of what you're

7 saying there in terms of value?

8 A Well, in order to -- like, my

9 understanding is we were talking about common

10 shares. So if someone came in and bought

11 preferred shares, that may not give us an

12 indication of value of the common shares.

13 Q Okay. If it required a shareholder vote

14 to issue preferred shares and the August agreement

15 gave Dr. Golberg voting control and there had

16 never been any discussion of issuing additional

17 common shares in connection with those two

18 investments, then that would indicate that they

19 were not going to be preferred shares.

20 Correct?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: I don't know. I can't

23 speculate.

24 BY MR. ZIMMER:

25 Q You can't speculate if -- if a company's

1 represented that they're in discussions to sell an
2 ownership interest in a company where it owns
3 95 percent of the common interest and no
4 preferred -- okay? -- and it does not have the
5 power, nor has it ever discussed issuing more
6 preferred shares, and yet it's telling a regulator
7 that it's going to be getting these investments
8 and consolidating, that doesn't -- that doesn't
9 speak to whether or not they could have been
10 contemplating selling preferred shares?

11 MR. KAZAN: Object to the form.

12 THE WITNESS: Again, I don't know if
13 they had the power or don't have the power
14 to sell preferred shares.

15 BY MR. ZIMMER:

16 Q Okay. Assume they don't have the power to
17 issue preferred shares --

18 A Okay.

19 Q -- and assume they had never discussed
20 issuing preferred shares with the people who do --

21 A Okay.

22 Q -- and assume they have told the regulator
23 that they're expecting two large investments --

24 A Okay.

25 Q -- which would be cash in, and the only

1 thing they have to sell is common shares, would
2 that require one to assume they were going to be
3 selling common shares and in an amount low enough
4 to allow them to continue to consolidate?

5 MR. KAZAN: Object to the form.

6 THE WITNESS: That's a fair
7 assumption, yes.

8 BY MR. ZIMMER:

9 Q You opine that Dr. Golberg -- I'm sorry.
10 You opine that Mr. Orr did not deduct the
11 present value of Navidea's shares from his damages
12 analysis. What does that mean?

13 A No. My last point?

14 Q Yes.

15 A Oh, I was just saying that if they were
16 to -- if he got the shares today, he didn't
17 consider that. So if he had tradeable shares
18 today, he didn't take that out of this damages.

19 Q Well, when you say, "if he had tradable
20 shares," what does that mean?

21 A It means if they issued him the stock and
22 cleared the legends on the stock.

23 Q Okay. But if Mr. Orr were opining on a
24 damages amount that doesn't include a remedy of
25 specific performance of issuing the shares, in

1 that circumstance, there would be no basis to

2 deduct the value of the shares. Right?

3 A That's correct. Yes.

4 Q You're just looking for money?

5 A Pardon?

6 Q You're just looking for the value. You're

7 not looking to have the shares and have the

8 difference in value?

9 A Correct.

10 Q Okay.

11 MR. ZIMMER: Why don't we take five

12 minutes and let me look through my notes?

13 MR. KAZAN: Sure.

14 MR. ZIMMER: We're getting close.

15 (A recess was held off the record.)

16 MR. ZIMMER: Back on the record.

17 BY MR. ZIMMER:

18 Q Do you know that Navidea claims that, to

19 this day, the prerequisites to issuing the shares

20 to Dr. Golberg may not have occurred and that

21 they're not even owed to him yet?

22 A No. I'm not aware of that.

23 Q That didn't play any role in your

24 analysis?

25 A No.

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William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

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1 MR. ZIMMER: That's it.

2 MR. KAZAN: Oh.

3 MR. ZIMMER: We're done.

4 MR. KAZAN: I don't have any
5 questions.

6 THE COURT REPORTER: Attorney Kazan,
7 do you have a preference for the format of
8 your transcript?

9 MR. KAZAN: PDF is fine.

10 THE COURT REPORTER: Thank you.

11 (The witness was dismissed, and the
12 deposition was concluded at 1:42 p.m.)

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William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021

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1 C E R T I F I C A T E O F D E P O N E N T

2

3 I, WILLIAM F. MURRAY, ASA, CPA/ABV, CFF, have
4 read the foregoing transcript of the testimony
5 given, and it is true and accurate, to the best of
6 my knowledge, as originally transcribed and/or
7 noted on the attached Errata Sheet.

8

9

10 WILLIAM F. MURRAY, ASA, CPA/ABV, CFF

11

12 Subscribed to and sworn to before me on
13 this ____ day of _____, 2021.

14

15

16 Notary Public

17 My Commission expires:

18

19

1:19-cv-01578-VEC

20

21 NAVIDEA BIOPHARMACEUTICALS

22 -vs-

23 MICHAEL M. GOLDBERG, M.D.

24 WILLIAM F. MURRAY, ASA - DECEMBER 6, 2021

25 WJL

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1 ERRATA SHEET: Please note any error(s) and/or
 2 correction(s) on this sheet. The rules require a
 3 reason for any change or correction. It may be
 4 general, such as "to correct stenographic error"
 5 or "to clarify the record" or "to conform with the
 6 facts."

7 To: Barry M. Kazan, Esq.

8 Re: Navidea Biopharmaceuticals, Inc. v.
 9 Michael M. Goldberg, M.D.

10 Deposition of William Murray, ASA, held on
 11 December 6, 2021

12	Page	Line	Correction	Reason For Change
13				
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1 STATE OF CONNECTICUT

2 COUNTY OF TOLLAND

3 I, Wendy J. Leard, a notary public for the
4 State of Connecticut, do hereby certify that the
5 deposition of WILLIAM F. MURRAY, ASA, CPA/ABV,
6 CFF, a witness, was taken before me pursuant to
7 the Federal Rules of Civil Procedure, held at the
8 offices of Halloran & Sage, 225 Asylum Street,
9 Hartford, Connecticut, commencing at 9:44 a.m., on
10 Monday, December 6, 2021.

11 I further certify that the deponent was first
12 sworn by me to tell the truth, the whole truth,
13 and nothing but the truth, and was examined by
14 counsel, and his testimony stenographically
15 reported by me and subsequently transcribed as
16 hereinbefore appears.

17 I further certify that I am not related to
18 the parties hereto or their counsel, and that I am
19 not in any way interested in the event of said
20 cause.

21 Dated at Somers, Connecticut, this 13th day
22 of December, 2021.

23 -----
24 Wendy J. Leard
Notary Public

25 My Commission Expires May 31, 2022

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